

CHAPTER Tax 100 ORGANIZATION

PART Tax 101 SCOPE AND APPLICABILITY OF RULES

Tax 101.01 Applicability and Interpretation.

(a) **Organization.** These rules are organized into rules applicable to all matters before the Board and rules applicable only to certain matters. Each part begins with a section on the scope and applicability of that part.

(b) **Interpretation.** These rules shall be interpreted to achieve consistent, just and expeditious disposition of all matters before the Board in accordance with the New Hampshire Constitution, the applicable statutes and case law and these rules.

Tax 101.02 Absence of a Rule.

No Limitation. These rules are not a limitation on the Board's statutory duties or powers. The absence of a rule does not limit the Board's power to act pursuant to its statutory authorization.

PART Tax 102 DEFINITIONS

Tax 102.01 “Abatement Application” means the written request Filed by a Taxpayer with the Municipality, pursuant to RSA 76:16 or RSA 79-A:10, seeking a tax abatement.

Tax 102.02 “Accident, Mistake or Misfortune” means something outside the Party's own control and not due to neglect, or something that a reasonably prudent person would not be expected to guard against or provide for.

Tax 102.03 “Agent” means a Taxpayer's or Condemnee's representative who is not an attorney.

Tax 102.04 “Appeal Document” means the written Property Tax Appeal, Exemption Appeal, Current-Use Appeal, department of revenue administration appeal, Equalized Valuation Appeal, Timber Tax appeal, Excavation Tax appeal, and Land-Use-Change Tax Appeal Filed with the Board by an Appellant/Taxpayer.

Tax 102.05 “Appellant/Taxpayer” means the person or entity that Filed an appeal, and for Property Tax Appeals and LUCT Appeals, this term includes a person aggrieved pursuant to RSA 76:16 and RSA 76:16-a.

Tax 102.06 “Appellee/Municipality” means the entity, including a town, or city, against whom the tax appeal was Filed.

Tax 102.07 “Appraisal” means a written opinion of value of a specific property that relies on the comparative sales, income, or cost approach, and any tax-assessment report that relies on assessment information or comparison. A sales or market analysis for listing a property for sale is not included in this definition. A cost-calculation sheet by itself is not included in this definition.

Tax 102.08 “Board” means the New Hampshire Board of tax and land appeals.

Tax 102.09 “Communications” means all exchanges of information, whether in person, in writing or by phone, including letters, notices, orders, and telephone calls.

Tax 102.10 “Comparable” means any property or sale relied upon by any Party for any reason and presented to the Board as part of any proceeding and includes:

(a) Properties and sales used for direct comparison to show similarity or dissimilarity to the appealed property and properties and sales used in Appraisals; and

(b) Properties or sales used to derive units of comparison or other comparative data such as market rents, expenses or costs. Properties or sales used in Statistical Reports are not included in this definition and are covered under Tax 101.33.

Tax 102.11 “Condemnee” means "Condemnee" as defined in RSA 498-A:2, II.

Tax 102.12 “Condemnor” means "Condemnor" as defined in RSA 498-A:2, III.

Tax 102.13 “Costs” means all fees, witness fees and expenses awardable by the Board pursuant to RSA 71-B:9, RSA 76:16-a, RSA 76:17-b, RSA 498-A:26-a and costs and attorney’s fees awardable pursuant to RSA 21-J:28-b, VI.

Tax 102.14 “Current-Use Appeal” means an RSA 79-A:10 appeal from a Municipality’s decision on a Taxpayer’s current-use application.

Tax 102.15 “DRA” means the New Hampshire department of revenue administration.

Tax 102.16 “DRA Appeal” means an RSA 21-J:28-b, IV appeal of a state tax determined by DRA.

Tax 102.17 “Declaration” means the declaration of taking, which is the document that begins an Eminent Domain Proceeding.

Tax 102.18 “Default” means a Party’s initial failure to comply, within the time set, with any Board request or order or with any Board rule.

Tax 102.19 “Document” means any written material Filed with the Board, including all appeals, petitions, motions, letters, and memoranda, excluding Exhibits submitted at a hearing.

Tax 102.20 “Equalized Valuation Appeal” means an RSA 71-B:5, II appeal by a Municipality of its equalized valuation as determined by the commissioner of revenue administration.

Tax 102.21 “Eminent-Domain Proceeding” means any condemnation Filed with the Board under RSA ch. 498-A involving one tract of property or tracts of property held by the same owner.

Tax 102.22 “Excavation Tax Appeal” means an RSA 72-B:13 appeal of an excavation tax assessed under RSA 72-B:4.

Tax 102.23 “Exemption Appeal” means an appeal from a Municipality’s decision on a Taxpayer’s application for exemption or credit under RSA ch. 72 in accordance with RSA 72:34-a (Supp. 1992).

Tax 102.24 “Ex Parte Communication” means any direct or indirect communication with the Board or any Board member concerning a pending matter when all Parties to the proceeding are not present or when all Parties have not been sent a copy of any written communication in accordance with RSA 541-A:36.

Tax 102.25 “Exhibit” means any nontestimonial evidence submitted either at a hearing, with a motion, expedited brief or memorandum or as part of any written submission of evidence.

Tax 102.26 “File” means:

(a) The date a Declaration is determined to be in compliance with RSA 498-A:5, II and receipted by the Board; or

(b) The date an Appeal Document, Abatement Application or other Document is:

(1) Hand delivered and received by the proper filing office;

(2) Postmarked by the United States Postal Service in accordance with RSA 80:55; or

(3) Marked as receipted for delivery by a courier or overnight service such as Federal Express or United Parcel Service.

Tax 102.27 “Final Default” means a Party's failure to cure a Default after having been advised by the Board of the Default and after having been provided an opportunity to cure the Default within a set time.

Tax 102.28 “Inventory” means the RSA 74:4 Inventory form.

Tax 102.29 “Leave” means Board permission granted after the Party requesting permission has Filed a motion for leave.

Tax 102.30 “LUCT Appeal” means an RSA 79-A:10 appeal of a land-use-change tax assessed under RSA 79-A:7.

Tax 102.31 “Month” means "month" as defined in RSA 21:8.

Tax 102.32 “Municipal Consultant” means a person or entity hired by a Municipality to represent its interest in a proceeding.

Tax 102.33 “Municipal Market Data Survey” means any Document prepared by or for a Municipality at the time of a reassessment analyzing any market data, including but not limited to sales, leases, income, and expenses, to arrive at base values used in the reassessment.

Tax 102.34 “Notice of Tax Date” means "date of notice of tax" as defined in RSA 76:1-a, II and III for Property Tax Appeals and LUCT Appeals, and as defined in RSA 72:1-d, II for Exemption Appeals.

Tax 102.35 “Party” means the person or entity designated as a Party in any matter before the Board and includes any Party's Agent or attorney.

Tax 102.36 “Property-Tax Appeal” means an appeal involving ad valorem property taxes and includes claims of disproportionate assessment under RSA ch. 76, RSA 71-B:16, RSA 75:14 and RSA 81:5.

Tax 102.37 “Statistical Report” means any Document analyzing market data, assessments, taxes, or such other matters and relied upon for statistical purposes only and not for property-specific purposes. Property-specific reports and Municipal Market Data Surveys are not included in this definition.

Tax 102.38 “Tax Appeals” means any appeal from any state or local tax.

PART Tax 103 DESCRIPTION OF BOARD

Tax 103.01 Board's Duties and Powers.

- (a) **General Duties.** The Board's general duties and powers are stated in RSA ch. 71-B.
- (b) **Tax Appeals.** Pursuant to RSA 76:16-a, RSA 71-B:11, and RSA 21-J:28-b, IV, the Board has concurrent, appellate jurisdiction with the superior court over all appeals concerning state and local taxation. Parties may appeal the Board's decision to the supreme court under RSA 541:6.
- (c) **Oversight Review of Property Taxes.** Pursuant to RSA 71-B:16 II, the Board has broad jurisdiction to act on its own initiative to review the legality and correctness of all property-tax matters, including current use. This review includes taxes previously assessed in accordance with Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981). Parties may appeal the Board's decision to the supreme court under RSA 541:6.
- (d) **Reassessments.** Pursuant to RSA 71-B:16 and RSA 79-A:12, the Board has exclusive, original jurisdiction over petitions for reassessments of individual properties by someone other than property owner and over petitions for review reassessment of all or a segment of properties within a Municipality. Parties may appeal the Board's decision to the supreme court under RSA 541:6.
- (e) **Equalization Valuation.** Pursuant to RSA 71-B:5 II, the Board has exclusive jurisdiction of challenges to the equalization valuation performed by the DRA pursuant to RSA 21-J:3, XIII. Parties may appeal the Board's decision to the supreme court under RSA 541:6.
- (f) **Eminent-Domain Proceedings.** Pursuant to RSA 498-A:3, the Board has exclusive, original jurisdiction over all Eminent-Domain Proceedings. Parties may appeal for a trial de novo to the superior court under RSA 498-A:27.

Tax 103.02 Board's Operation.

- (a) **Location.** The Board's offices and hearing room are in Johnson Hall, Third Floor, 107 Pleasant Street, Concord, NH 03301, and its telephone number is (603) 271-2578.
- (b) **Business Hours.** The office is open to receive filings and to hold hearings on all legal state work days from 8:00 a.m. to 4:30 p.m.

PART Tax 104 REQUESTS FOR INFORMATION

Tax 104.01 Requests for Information.

- (a) **Applicability.** This section shall apply to any person intending to submit requests for information such as copies of forms/rules, general questions, or the status of a file. This rule shall not apply to requests for rehearing/clarification, which is governed by Tax 201.37.
- (b) **Procedure.** A request for information shall:
- (1) Be in writing and submitted to the Board's clerk;
 - (2) Specifically cite the information requested;
 - (3) Be accompanied with a self-addressed, stamped envelope, if applicable; and
 - (4) Be accompanied with the proper copying fees under Tax 501, if applicable.

(c) **Requests in Person.** A Party may request information in person at the Board's offices. Requests that warrant additional time to compile shall be in writing, allowing sufficient time for mailing.

CHAPTER Tax 200 RULES OF PROCEDURE

PART Tax 201 RULES APPLICABLE TO ALL PROCEDURES

Tax 201.01 Purpose and Applicability.

(a) **Purpose.** This chapter is intended to promote the just, consistent and efficient handling of all proceedings before the Board.

(b) **Applicability.** This part, as well as Tax 101, shall apply to all Board proceedings except as specifically stated.

(c) Because the Board's rules or governing statutes address the requirements of RSA 541-A:30-a, the model rules shall not apply to Board procedures.

Tax 201.02 Communications with the Board.

(a) **Address.** All Communications shall be addressed to the Board clerk or his/her designee and not to any Board member.

(b) **Ex Parte.** Ex Parte Communications shall be strictly prohibited pursuant to RSA 541-A:36.

(c) **Requests.** All requests for Board action shall be made in writing and when appropriate by motion under Tax 201.18.

Tax 201.03 Computation of Time.

(a) **Computation.** In computing any period of time prescribed or allowed by these rules and any statute governing the Board, the day of the act, event, or Default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a federal or state legal holiday, or any day on which the filing office, whether the Board or a Municipality's office, is officially closed for the day or not open during the office's normal hours in accordance with RSA 21:35, RSA 21-J:28-b, VII, RSA 76:16-e and RSA 80:55, III.

(b) **Enlargement.** Upon determination of Accident, Mistake or Misfortune, the Board shall order the period enlarged for complying with deadlines imposed by these rules or Board order. Unless authorized by statute, the Board shall not enlarge time periods prescribed by statute.

(c) **Clerk's Date.** Unless otherwise specified by law, rule, or order, when a Party is required to act within a certain number of days, that period shall begin on the day after the clerk's certification date written on the order or on the day after the date written on any other communication from the Board in accordance with RSA 21:35. The date a Party receives the order or other communication shall not be the starting date. The clerk shall mail all orders or other communication on the date indicated on the Document.

(d) **Filing Date.** If a Document, tax appeal or Abatement Application is Filed and the envelope in which the Document was sent is not available to review the cancellation mark or the cancellation mark is illegible, the Document shall be treated as having been mailed 3 days before its receipt by the Board unless there is evidence showing a different mailing date in accordance with RSA 80:55, I(b).

Tax 201.04 Default.

(a) **Applicability.** This section shall apply to all matters before the Board, except for hearing attendance, which shall be governed by Tax 202.06. This section shall establish a procedure for addressing noncompliance with Board orders or requests.

(b) **Default.** A Party who fails to respond to or comply with a Board order or rule, shall be considered in Default.

(c) **Default Order.** Upon Default, the Board shall send the Party a Default order signed by the clerk or a deputy clerk.

(d) **Contents of Default Order.** Default orders shall:

- (1) Specify how the Party has Defaulted;
- (2) Order the Party to cure the Default within a specified period; and
- (3) Inform the Party of the effects of the failure to timely cure the Default.

Tax 201.05 Final Default.

(a) **Applicability.** This section shall not apply to hearing attendance, which shall be governed by Tax 202.06.

(b) **Compliance.** If a Party timely complies with a Default order, the Board shall, without order, proceed with the appeal.

(c) **Noncompliance.** If a Party fails to timely cure the Default order, a Final Default order shall be issued at the Board's direction, signed by the clerk or a deputy clerk, and the effects stated in the Default order shall occur.

Tax 201.06 Striking Final Default.

(a) **Motion.** To set aside a Final Default, a Party shall:

- (1) Cure the Default within the timelines prescribed in the Final Default; and
- (2) Move to strike the Final Default, stating in the motion the reasons the Party failed to comply with the Board's original order or rule and stating the reasons the Party failed to timely cure the Default once ordered to do so.

(b) **Board Action.** The Board shall only grant the motion to set aside the Final Default when the Party's failures were due to Accident, Mistake or Misfortune.

Tax 201.07 Appearance and Representation Before the Board.

(a) **Appearance.** Any Party may appear before the Board on his/her/its own behalf, by an attorney upon compliance with Tax 201.09, or by an Agent upon compliance with Tax 207.03. The actions or inactions of attorneys or Agents shall bind the represented Party.

(b) **Conducting a Hearing.** Nothing in this section shall be interpreted to restrict a Party's right to conduct a hearing before the Board.

(c) **Unauthorized Practice.** Nothing in this section shall be interpreted to allow the unauthorized practice of law in accordance with RSA 311:7.

(d) **Authority.** The person who attends the hearing or a prehearing conference for a Party shall either:

- (1) Come with the Party's authority to make all decisions on the appeal, including the authority to settle the case; or
- (2) Ensure his or her client can be contacted immediately by phone to authorize the Agent on specific decisions, including the decision to settle the case.

Tax 201.08 Appearances.

(a) **Contents.** Except as noted below, each Party shall File an appearance signed by the Party or the Party's attorney, Agent or Municipal Consultant, listing:

- (1) The name and docket number of the matter;
- (2) The Party for whom the appearance is Filed; and
- (3) The appearing person's name, address and daytime phone number.

(b) **Appearance by Attorney or Agent.** If an appearance is Filed by an attorney, Agent or Municipal Consultant, the appearance shall:

- (1) Comply with paragraph (a) above;
- (2) State the attorney, Agent or Municipal Consultant has the Party's authorization to appear and act on the Party's behalf; and
- (3) Certify the attorney, Agent or Municipal Consultant:
 - a. Has sent a copy of the appearance to the represented Party and the opposing Party; and
 - b. Is aware of the restriction in Tax 201.11 on withdrawing the appearance.

(c) **Appeal Documents.** In Tax Appeals, the Appeal Document shall constitute the appearance of the person signing the Document, provided the following requirements are met:

- (1) **Taxpayer.** The information required pursuant to (a) above, excepting the docket number, shall be included in the Appeal Document and shall constitute the Taxpayer's appearance; and/or
- (2) **Attorney/Agent.** The information required by (a) and (b) above, excepting the docket number, shall be included in the Appeal Document in order to constitute the attorney or Agent's appearance on behalf of a Taxpayer.

(d) **Condemnor's Appearance.** In Eminent-Domain Proceedings, the Declaration shall constitute the Condemnor's appearance, provided the information required by paragraph (a) above, excepting the docket number, was included in the Declaration.

(e) **Board Communications.** When an appearance has been Filed, all Communications from the Board to the parties shall be made through the attorney, Agent or Municipal Consultant, including sending the attorney, Agent or Municipal Consultant all hearing notices and decisions. However, when an appearance has been Filed for a Municipality, the Board shall send a courtesy copy of all hearing notices, orders and decisions directly to the Municipality.

(f) **Parties' Communications.** When an appearance has been Filed by an attorney, Agent or Municipal Consultant, all Communications between the Parties shall be made through the person listed on the appearance.

Tax 201.09 Appearances by Attorneys.

(a) **Practice Before Board.** An attorney who is a member in good standing of the bar of any court of the United States or of the highest court of any state shall be permitted to practice before the Board in a particular action after filing an appearance.

(b) **Association with Local Counsel.** If applicable, the appearance shall include a certification that the attorney's client has been informed that the attorney is not admitted to practice law in New Hampshire. The Board shall require an out-of-state attorney to associate with a New Hampshire attorney, if, after a duly noticed hearing, the Board determines the attorney is unfamiliar with applicable New Hampshire law and the Board's procedures and administrative rules.

(c) **Revocation of Permission.** The Board shall revoke an out-of-state attorney's permission to represent a Party when the Board concludes, after a duly noticed hearing:

- (1) That the attorney is unfamiliar with applicable New Hampshire law and the Board's procedures and administrative rules; and
- (2) The attorney's continued representation would be detrimental to the represented Party.

(d) **Submission of Jurisdiction.** All attorneys shall act in accordance with the New Hampshire Professional Conduct Rules.

Tax 201.10 Address and Phone Number/Service of Written Communications.

(a) **Address.** All Documents Filed with the Board shall include the filing Party's mailing address, actual street address and daytime phone number.

(b) **Change of Address.** Parties shall notify the Board of any change in address or phone number.

(c) **Service of Written Communication.** Unless otherwise required by statute or rule, service of written Communications by the Board or by parties shall be made by first class mail.

(d) **Sending Communications.** Unless otherwise shown by a Party or unless the written Communication is returned by the United States Postal Service, written Communications mailed in accordance with this rule by the Board or the Parties shall be deemed to have been received by the person so notified.

Tax 201.11 Withdrawal of Appearance.

(a) **Motion.** An attorney, Agent or Municipal Consultant may withdraw by filing a withdrawal-of-appearance motion with the Board, copying the client and all other Parties. The withdrawal motion shall include the Party's current address and phone number.

(b) **Board Action.** The motion to withdraw appearance shall be automatically granted within 14 days of Filing, provided:

- (1) There are no pending motions;
- (2) No hearing date has been set; and
- (3) No Party objects.

(c) **Granting Motion.** If the criteria required by (b) above are not met, the Board shall review the motion and grant it provided neither Party is prejudiced by the withdrawal.

(d) **Objection.** Any objection to a withdrawal-of-appearance motion shall be Filed within 10 days of the Filing of the withdrawal-of-appearance motion and shall state with specificity the reasons for objecting. The objection shall only be sustained if the proceeding has progressed to such a stage that allowing the withdrawal would be unduly prejudicial to the Parties or would adversely affect the Board's processing the file.

(e) **Future Communications.** Whenever an attorney or Agent withdraws from an action and no other appearance is entered, all future Communications shall be sent to the Taxpayer or Condemnee.

Tax 201.12 Conveyance.

If the property subject to a proceeding is conveyed during a tax year or while an appeal is pending, the original Taxpayer shall continue to be the Party, unless the Board, on its own or upon a motion and after notice, directs the person to whom the interest has been transferred to be substituted or joined with the original Party. Parties claiming entitlement to their predecessor's rights, such as the predecessor's Filing of an Abatement Application, shall File an assignment of rights from the predecessor to the Taxpayer, which shall be signed by the predecessor.

Tax 201.13 Conduct of Parties, Attorneys, Agents and Municipal Consultants.

Parties, attorneys, Agents and Municipal Consultants shall conduct themselves in a truthful and respectful manner in all of their dealings with the Board and other Parties, attorneys and Agents.

Tax 201.14 Copies of Filed Documents.

(a) **Copies to All Parties.** All Documents, except the Appeal Document, Filed with the Board shall be simultaneously copied to all other Parties. The submitting Party shall state in the Document that a copy was sent to all other Parties.

(b) **Memorandum.** The Party filing any memorandum or requests for findings/rulings shall File the original and 3 copies. If a Party fails to supply the correct number of copies, the Board shall either return the Document for copying by the Party or copy the Document and bill the Party for copying costs.

Tax 201.15 Form of Documents.

(a) **Form.** In addition to complying with all other applicable rules, every Document shall include at the beginning of the Document:

- (1) The name of the case;
- (2) The docket number;
- (3) The title of the Document, for example, "Motion to Continue";
- (4) The name, address and telephone number of the submitting Party or the Party's attorney or Agent; and
- (5) A statement that a copy of the Document was sent to all other Parties.

(b) **Separate Paragraphs.** All statements of claim or defense shall be made in numbered paragraphs, and each numbered paragraph shall be limited as far as practicable to a statement of a single set of circumstances.

(c) **Adoption by Reference.** Statements in a Document may be adopted by reference in a different part of the same or another Document.

(d) **Attached Documents.** A copy of any written instrument that is attached or referenced to a Document shall be a part thereof for all purposes.

Tax 201.16 Signing Documents.

(a) **Signature.** Every Document shall be signed by the Party or the Party's attorney, Agent or Municipal Consultant. The Document shall include the signer's name, address and telephone number.

(b) **Certification.** The signature on a Document shall constitute a certification:

- (1) That the signer has read the Document;
- (2) That the facts in the Document are true to the best of the signer's knowledge formed after reasonable inquiry;
- (3) That no pertinent facts have been excluded;
- (4) That the Party's position on any request is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and
- (5) That the Document is not submitted for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the litigation Costs.

(c) **False Swearing.** RSA 641:1, RSA 641:2, and RSA 641:3 shall apply to all submitted Documents.

Tax 201.17 Nonconforming Documents.

(a) **Facsimile or Electronic Mail.** If a Party submits a Document by facsimile or electronic mail, that Document shall not constitute a Filed Document as defined in Tax 102.26.

(b) **Returned or Nonconforming Documents.** If a Party Files with the Board a Document that does not comply with any statute or Board rule, the Board shall:

- (1) Date stamp the Document;
- (2) Return the Document to the submitting Party;
- (3) Notify the Party of the noncompliance; and
- (4) Provide the Party with 10 days to re-File a conforming Document.

(c) **Compliance.** If the submitting Party timely re-Files a conforming Document, the Document shall be considered as Filed on the original filing date.

(d) **Noncompliance.** If the submitting Party fails to timely re-File a conforming Document, the Document shall be considered as Filed on the re-filing date, not the original Filing date, which could result in the Document being untimely Filed under a statute, rule or order.

Tax 201.18 Motions and Objections.

(a) **Requirement and Format.** All requests for Board action shall be made by Filing an original and 4 copies of a motion that, unless made during a hearing, complies with all other applicable Board rules, and:

- (1) Is in writing unless made on the record at a hearing;
- (2) States with specificity the grounds therefore;
- (3) States the relief sought;
- (4) States compliance with paragraph (b) below on seeking concurrence;
- (5) Is signed in accordance with Tax 201.16;
- (6) Is copied to all other Parties; and
- (7) States that a copy was sent to all other Parties.

(b) **Seeking Concurrence.** The moving Party shall make a good-faith attempt to obtain concurrence from the opposing Party in the relief sought, except for dispositive motions or other motions where it can reasonably be assumed the moving Party will be unable to obtain concurrence. The motion shall recite compliance with this paragraph.

(c) **Supporting Facts.** Unless apparent from the record or agreed upon by the Parties, the Board shall not rely upon any facts in deciding a motion unless the facts and Documents relied on in the motion are submitted under certification of truthfulness subject to the penalties of RSA 641:1, RSA 641:2, and RSA 641:3.

(d) **Objections.** An objection to a motion shall be Filed within 10 days after the motion was received by the Board. Once an objection is received by the Board, no further Documents pertaining to the underlying motion shall be accepted from any Party unless relief is granted pursuant to Tax 201.41.

(e) **Memorandum.** Supporting memorandum and Documents shall be Filed with the motion or objection, unless the Board has granted Leave for a later filing.

(f) **Decision on Motions.** Motions shall be decided with or without an oral hearing. An oral hearing shall be granted on the Board's own initiative or upon a Party's granted request when the Board concludes an oral hearing will materially assist the Board or is required to comply with the law.

Tax 201.19 Discovery.

(a) **Requests.** Parties may employ discovery to adequately prepare an appeal, provided discovery requests are not overly burdensome based on the type and complexity of the appeal. A Party may informally seek information and Documents from the other Party, but the Board shall only enforce formal discovery requests.

(b) **Superior Court Rules.** Except as modified in these rules, the superior court discovery rules shall apply to all Board proceedings.

(c) **Language.** All written discovery requests shall be in plain and concise language.

(d) **Limitation.** Except by Leave of the Board and only when the moving Party demonstrates additional interrogatories are required to ensure full discovery, no Party shall serve more than 15 interrogatories on the opposing Party.

(e) **Enforcement Motions.** Before the Board accepts any discovery enforcement motion, the moving Party shall make diligent efforts, directly with the other Party, to obtain compliance. All enforcement motions shall state how compliance was sought.

(f) **Failure to Comply.** If a Party fails to comply with this or other discovery rules or if a Party's discovery request is overly burdensome given the case, the Board shall either deny the enforcement motion or issue an order as to which items of discovery requested shall be responded to.

Tax 201.20 Prehearing Submissions and Conferences.

(a) **Conference and Submissions.** The Board shall hold prehearing conferences pursuant to RSA 541-A:31, V (c) or require prehearing submissions.

(b) **Purposes.** Prehearing conferences and submissions shall be nonadjudicative proceedings to achieve 2 general ends:

- (1) Prepare the matter for final hearing; and
- (2) Explore settlement.

(c) **Noncompliance.** If a Party fails to submit an ordered prehearing submission, the Tax 201.04 and Tax 201.05 Default procedures shall be followed.

(d) **Nonattendance.** Parties who fail to attend a prehearing conference shall be deemed to have waived:

- (1) The opportunity to present their positions at the prehearing conference, except as presented in writing to the Board in the Party's prehearing submission; and
- (2) The opportunity at the prehearing conference to confront, question or challenge the other Party's position and presentation, except as presented in writing to the Board in the Party's prehearing submission.

(e) **Orders.** A Party's nonattendance shall not affect the Board's authority to issue a prehearing conference order pursuant to RSA 541-A:31, V(c).

Tax 201.21 Consolidation.

In actions involving common questions of law or fact the Board shall, upon motion or its own initiative:

- (a) Consolidate part of or all of the actions, including consolidation for hearings and decisions; and
- (b) Make such orders concerning proceedings therein to avoid unnecessary costs or delay.

Tax 201.22 Withdrawal of Case.

(a) **Withdrawal of Case.** The Appellant/Taxpayer may withdraw a case by filing a written case withdrawal. The Appellant/Taxpayer shall provide a copy of the withdrawal to the Municipality/DRA.

(b) **Board Action.** The withdrawal shall be accepted and the matter marked "withdrawn; no further action" except the Municipality shall have 10 days from the clerk's date on the order to File a request for Costs under Tax 201.39.

(c) **Effect.** A withdrawal shall terminate the Board's consideration of a matter, and once the file has been so marked, the Appellant/Taxpayer shall not rescind the withdrawal. A withdrawal shall not be considered a Board decision unless the withdrawal is Filed with a settlement agreement in accordance with Tax 201.23.

Tax 201.23 Settlement and Stipulations.

(a) **Settlements.** Settlements between the Parties shall be encouraged in accordance with RSA 541-A:31, V. Parties shall attempt to settle a matter before it is scheduled for a hearing.

(b) **Settlement Agreements.** All settlement agreements, except those made on the record or recited in an order, shall:

- (1) Be in writing, describing the agreement's material terms; and
- (2) Be signed by both Parties or their attorneys, Agents or Municipal Consultants.

(c) **Property-Tax Appeals.** In Property-Tax Appeals, the settlement agreement shall state the agreed-upon assessment and the year(s) for which the assessment shall apply. The Board shall reject any settlement of a Property-Tax Appeal if the settlement would result in disproportionate, illegal, fraudulent or unfair assessment or taxation.

(d) **Notification of Settlement.** If a matter has been scheduled for a hearing and the parties settle with insufficient time to File the signed settlement agreement before the hearing, either Party shall, before the hearing, call the Board's clerk and inform her/him of the settlement. The Parties shall then, within 10 days of the call to the Board, File the settlement agreement.

(e) **Failure to File Settlement Agreement.** If the settlement agreement or stipulation is not Filed, the Board shall notify the Parties that unless a Party Files an objection within 10 days, the docket will be marked: "case settled; no further action, no Costs."

Tax 201.24 Filing with Board and Superior Court.

(a) **One Appeal.** Where the applicable appeal statute authorizes an appeal to the Board or the superior court, taking an appeal to one tribunal shall be a waiver of the right to appeal to the other tribunal in accordance with RSA 71-B:11, RSA 21-J:28-b IV, RSA 76:16-a, and RSA 76:17.

(b) **Dual Appeal.** If a Party has appealed to both the Board and the superior court, the Board shall:

- (1) Order the Appellant/Taxpayer to inform the Board when the superior court appeal was taken;
- (2) Either:
 - a. Dismiss the Board appeal if the Taxpayer/Appellant first appealed to the superior court; or
 - b. Retain jurisdiction of the Board appeal if the Taxpayer/Appellant first appealed to the Board and notify the superior court of the Taxpayer/Appellant's dual appeal; and

- (3) Take such other actions it deems appropriate to preserve the Appellant/Taxpayer's right to appeal to one tribunal, such as transferring an appeal to the superior court or accepting an appeal from the superior court.

Tax 201.25 Subpoena.

(a) **General Rule.** The Board and Parties may subpoena witnesses and Documents by following the procedures used in superior court cases in accordance with RSA 71-B:9 and RSA ch. 516.

(b) **By the Parties.** Any Party wishing to subpoena a witness or Documents shall comply with RSA ch. 516. The Board shall not issue subpoenas to Parties wishing to subpoena witnesses or Documents.

(c) **Service and Content.** The Party shall prepare and serve its own subpoena, which:

- (1) Includes the name and docket number of the case;
- (2) Is in the form required by RSA ch. 516; and
- (3) Is signed by a justice of the peace as required by RSA 516:3.

(d) **By the Board.** When the Board issues a subpoena to a witness, the Board shall comply with RSA ch. 516 and RSA 71-B:9.

(e) **Time.** Subpoenas shall be served at least 10 days before the hearing date for which the witness is being subpoenaed.

(f) **Motion to Quash.** A subpoenaed witness may move to quash the subpoena by Filing a motion to quash, stating in the motion the grounds therefor. Filing a motion to quash shall not excuse the witness's attendance unless the Board grants the motion.

Tax 201.26 Continuances.

(a) **Motions.** Motions for continuances, that is, requests to reschedule a hearing, shall:

- (1) Be Filed within 14 days of the clerk's date on the hearing notice except when a later Filing is justified by Accident, Mistake or Misfortune;
- (2) State with specificity the reason for the continuance request and, as applicable, comply with (b), (c) and (d) below;
- (3) State when the matter can be rescheduled; and
- (4) If Filed by an attorney, Agent or Municipal Consultant, state:
 - a. The client has been advised of the continuance request and the reasons therefor;
 - b. The client has been sent a copy of the continuance motion; and
 - c. The client has consented to the continuance.

(b) **Concurrence.** The moving Party shall comply with the requirements for seeking concurrence set forth in Tax 201.18(b). The Board shall not be bound by the other Party's concurrence to the continuance request and shall only grant continuances in extraordinary circumstances in accordance with (g) and (h) below.

(c) **Other Hearing.** If the continuance request is based on a conflicting court or other tribunal's hearing, the motion shall state:

- (1) The date and time, case name, docket number and court or tribunal of the other matter;
- (2) The substance of the other hearing;
- (3) Whether a continuance of the other matter has been sought and the results of that request; and
- (4) Whether anyone else could cover either the Board's hearing or the other hearing.

(d) **Unavailable Witnesses or Evidence.** If the continuance request is based on inability to procure or present material evidence, by testimony or by Documents, the motion shall:

- (1) State the name of the witness or Document;
- (2) State the nature of the evidence;
- (3) State the reason for its unavailability;
- (4) State the steps taken to procure the evidence for the hearing; and
- (5) Include a statement that the other Party has been consulted about whether the evidence can be received without live testimony.

(e) **Medical Reasons.** If the continuance request is based on illness or injury, the motion shall state sufficient medical information to allow the Board to determine whether a continuance is warranted. This information shall include the nature of the illness or injury and the name and address of the treating physician.

(f) **Hearing Attendance.** A Party seeking a continuance may in the motion state that if the continuance is not granted the Party will not attend the hearing. Such notice shall constitute notice under Tax 202.06(d)(1). The Party shall, however, submit its Tax 202.06(d)(2) brief before the hearing.

(g) **Continuances in Tax Appeals.** Continuances in Tax Appeals shall only be granted in extraordinary circumstances, including:

- (1) Illness or injury has prevented a Party or material witness from preparing for the hearing or will prevent the Party from attending the hearing;
- (2) A Party has a conflicting hearing in another tribunal that cannot be continued and the Party cannot find a reasonable substitute for either the Board's hearing or the other hearing and when justice or efficiency is served by allowing the Party to be at the hearing;
- (3) Material evidence will be unavailable for the hearing despite the Party's due diligence to obtain the evidence for the hearing, and if the evidence could be introduced in writing, the other Party will not consent to the introduction solely in writing or the proffering Party would be prejudiced by limiting it to a written submission; and
- (4) Such other reasons that warrant a continuance to serve justice and efficiency.

(h) **Continuances in Eminent-Domain Proceedings.** In Eminent-Domain Proceedings, continuances of the first hearing shall be granted for the reasons stated above or when the Parties have had insufficient time to properly investigate and prepare for the hearing. Further continuances shall only be granted in accordance with Tax 201.26 (a) through (g).

Tax 201.27 Hearings and Standard of Proof.

(a) **Purpose.** This section is intended to promote the efficient use of the Board's and the Parties' time at hearings. This section is not intended to impede a Party's right to a hearing, but it is intended to require Parties to make succinct and organized presentations.

(b) **General Requirements.** All hearings shall be held in accordance with the New Hampshire Constitution, RSA 541-A and RSA 71-B and such other statutes applicable to the particular type of hearing.

(c) **Specific Time Limit.** If specific time limits are to be imposed on a hearing, the Board shall state such limits in the hearing notice. Parties requiring more than the allotted time shall, within 14 days of the clerk's date on the hearing notice, File a request for additional time, specifying why the allotted time is insufficient and stating how much additional time is required. The Board shall rule on such motion before the hearing begins.

(d) **Enforcement of Time Limits.** The Board shall enforce specific time limits by requiring Parties to complete their presentations within the time limits.

(e) **Concise Time Limits.** In addition to the specific time limits discussed above, the Board shall control the length of hearings by requiring succinct presentations and preventing Parties from making irrelevant, immaterial and repetitious presentations.

(f) **Standard of Proof.** Unless otherwise required by statute, the standard of proof shall be by a preponderance of the evidence.

(g) **Identification on the Record.** Any person offering testimony, evidence or arguments shall state his/her name on the record. If the person is representing another person, the person being represented shall also be identified by name.

(h) **Testimony.** Testimony shall be offered in the following order:

- (1) The Party bearing the overall burden of proof and such witnesses as the Party may call;
- (2) The Party or Parties opposing the Party who bears the overall burden of proof and such witnesses as the Party may call; and
- (3) Intervenors.

(i) **Intervention.** A nonparty may seek intervention under the provisions of RSA 541-A:32.

(j) **Limitation of Intervenors.** Pursuant to RSA 541-A:32, when the Board grants intervenor status, the order shall state the scope and limitations on the intervenor's participation as outlined in RSA 541-A:32, III.

(k) **Closing the Record.** The record shall be closed at the conclusion of the hearing unless the Board leaves the record open to receive additional evidence or Documents requested by the Board at the hearing.

(l) **Reopening the Record.** The record shall not be reopened except as provided in Tax 201.37(e) or by specific Leave of the Board.

Tax 201.28 Telephonic Conferences.

(a) **Telephonic Hearings.** On its own or upon motion or request, the Board may hold telephone conferences on preliminary matters and motions, provided all Parties agree to the phone conference.

(b) **Record.** No verbatim record shall be made of telephone conferences held under (a) above unless requested by a Party.

Tax 201.29 Hearing Tape and Transcript.

(a) **Record in Tax Appeals.** The Board shall tape record all oral proceedings, and such tape shall be the official record. Parties may, at their costs, arrange to have a stenographer at a tax-appeal hearing.

(b) **Record in Eminent-Domain Proceedings.** Just-compensation hearings in Eminent-Domain Proceedings shall be by stenographic record, provided funds are budgeted for such record. If funds are not available, the proceeding shall be tape recorded.

(c) **Availability.** Tapes shall be available for inspection and recording as provided by RSA 71-B:7. Parties shall contact the Board to arrange a time to inspect or record the tape. Parties may copy a tape with their own tape and recorder without a fee, but such tape shall not be an authentic tape.

(d) **Copies of Tapes.** Parties may request copies of tapes. Such request shall be made within the RSA 71-B:7 period and shall be accompanied by the fee stated in Tax 501.01.

(e) **Preservation of Tapes.** Tapes shall be maintained for 45 days following a final decision that was not appealed. If an appeal is taken, tapes shall be maintained until the case is finally adjudicated in accordance with RSA 71-B:7.

(f) **Transcripts.** Since the Board has no transcription services, any Party wishing a transcript shall arrange and pay for the transcription of the tape.

Tax 201.30 Evidence.

(a) **General Rule.** Pursuant to RSA 71-B:7 and RSA 541-A:33, II, the Board shall not be bound by the strict rules of evidence adhered to in the superior court.

(b) **Objections.** In ruling on objections to evidence presented, the Board shall consider, but shall not be bound by, the rules of evidence, giving due regard both to the principles behind the rules of evidence and to the Board's statutory function and purpose.

(c) **Exclusive of Certain Evidence.** The Board shall exclude irrelevant, immaterial and unduly repetitious evidence in accordance with RSA 541-A:33, II.

Tax 201.31 Copies of Exhibits.

(a) **Original and Copies.** The Party offering any Exhibit at a hearing shall have the original marked and shall provide one copy to the other Party and shall provide 2 copies to the Board.

(b) **No Copies Required.** Additional copies shall not be required for photographs, maps or other Documents that are not easily copied.

(c) **Noncompliance.** If a Party fails to supply the correct number of copies, the Board shall either return the Document for copying by the Party or copy the Document and bill the Party for copying costs.

Tax 201.32 Return of Exhibits.

(a) **Eminent-Domain.** In eminent domain proceedings, Exhibits shall be available for pick up once the Board's just compensation report is issued. Exhibits not picked up within 90 days of the Board's just compensation report shall be destroyed.

(b) **Tax Cases.** In all other proceedings, upon written request, Exhibits shall be available for pick up 45 days after a final, nonappealable decision has been issued. Exhibits not picked up within 90 days of the Board's final, nonappealable decision shall be destroyed.

Tax 201.33 Comparable Properties.

(a) **Purpose.** This section is intended to ensure adequate preparation for hearings without overburdening the Parties. The notification of Comparables enables one Party to review the other Party's Comparables before the hearing, thereby avoiding surprise and resulting in more informed presentations to the Board.

(b) **Notification.** Unless earlier ordered by the Board or requested through discovery, any Party intending to use Comparable properties shall mail or hand deliver to the other Party a written list of the Comparables. Such notification shall be made after receipt of the hearing notice and at least 14 days before the hearing at which the Comparables will be relied upon.

(c) **Contents of Notification.** Such notification shall state for each Comparable:

- (1) The street address;
- (2) The current owner; and
- (3) If available, the tax map and lot number.

(d) **Noncompliance.** If a Party fails to comply with (b) above, the Board shall exclude the Comparables.

(e) **Properties in Abatement Application or Appeal Document.** Properties listed in the Abatement Application or the Appeal Document or otherwise submitted before the hearing notice shall not constitute notice hereunder unless such notice was made pursuant to Board order or obtained through discovery.

(f) **Assessment-Record Cards.** In Property-Tax Appeals, the Party submitting a Comparable shall, before or at the hearing, submit to the Board 2 complete copies of the Comparable's assessment-record card for the year under appeal. The Party shall also provide the other Party with a copy of the card.

(g) **Number of Comparables.** Except when Comparables are used solely in a Statistical Report or as part of a Municipal Market Data Survey, Parties shall be limited to 10 Comparables per appealed residential property and 20 Comparables per appealed nonresidential property. Parties may move for Leave to use more Comparables, and the Board shall only grant such motion if the moving Party has shown the additional Comparables are necessary for the Party's case and the use of the additional Comparables will not be unduly repetitious or burdensome.

(h) **Additional Comparables.** If the Parties have been ordered to submit their Comparables at a prehearing conference, they shall be restricted to such Comparables at the final hearing unless granted Leave to submit additional Comparables.

(i) **Municipal Market Data Surveys.** The Municipality shall, upon a Taxpayer's request, allow a Taxpayer to review and copy any Municipal Market Data Surveys.

Tax 201.34 Form of Appraisals.

(a) **Purpose.** Appraisals are submitted to present and support a Party's opinion of value or assessment in an organized and succinct format. This section is intended to ensure the Board receives Appraisals that are uniformly prepared with all relevant information presented in an organized way.

(b) **Binding and Page Numbering.** Appraisals shall be bound or stapled and every page shall be numbered. Removable clips shall not be used.

(c) **Contents.** Appraisals shall include:

- (1) A table of contents with reference to numbered pages;
- (2) A description of the property and the property interest appraised;
- (3) Original photographs of the property and, if taken, original photographs of the Comparables;
- (4) A complete copy of the property's deed to the present owner;
- (5) A map showing the property and all Comparables;
- (6) A comparison chart or grid showing units of comparison and adjustments to Comparables;
- (7) If a replacement-cost method is used, a complete reference to the cost manual used, including the manual's name, date and section and, if used, a copy of the calculator-cost form;
- (8) A conclusion of value with a date of valuation;
- (9) A statement of whether the Appraisal preparer has any financial interest in the property or in the result of the Appraisal or in the Board's decision, including a statement of how the preparer is being compensated for the Appraisal and any testimony, such as whether the preparer is receiving a flat fee, hourly fee or percentage of abatement; and
- (10) A statement of the Appraisal preparer's qualifications.

(d) **Prohibitive Contents.** Appraisals shall not contain irrelevant, superfluous or repetitive material.

(e) **Noncompliance.** The Board shall exclude from evidence nonconforming Appraisals or it shall take such other actions as it deems appropriate.

Tax 201.35 Exchange of Appraisals and Statistical Reports.

(a) **Exchange.** Unless ordered earlier by the Board or requested through discovery, any Party intending to submit an Appraisal or Statistical Report shall submit a copy of the same to the other Party after the hearing notice but not less than 14 days before the hearing.

(b) **Appraisals and Statistical Reports.** An Appraisal or Statistical Report submitted with the Abatement Application, the Appeal Document or otherwise submitted before the hearing notice shall not constitute compliance hereunder unless:

- (1) The earlier submission was required by Board order or discovery; or
- (2) The proffering Party sends the other Party a notice of the intent to use the previously provided Appraisal or Statistical Report.

(c) **Noncompliance.** If a Party fails to comply with (a) above, the Board shall exclude the Appraisal or Statistical Report.

Tax 201.36 Requests for Findings of Fact and Rulings of Law and Legal Memoranda and Decisions/Orders.

(a) **Filing.** Unless granted Leave by the Board, all requests for findings and rulings and hearing memoranda shall be submitted to the Board before the close of a hearing. When Parties have Leave to submit requests or memoranda after a hearing, the Board shall provide the Parties with a filing schedule. The Party with the burden of proof shall File the first memorandum, and then the opposing Party shall File its memorandum. Additional memoranda may only be Filed by Leave of the Board, which Leave shall be granted only when additional memoranda are required to allow each Party to present their position and when additional memoranda will assist the Board.

(b) **Form of Requests for Findings.** Requests for findings and rulings shall consist of separately numbered paragraphs with only one finding or ruling per paragraph. Requests that contain multiple findings or rulings shall be marked "neither granted nor denied."

(c) **Number of Requests.** Unless granted Leave by the Board, Parties shall be limited to a combined total of 25 requests for findings of fact and/or rulings of law.

(d) **Final Decision.** Following the hearing, the Board shall issue a decision/order with sufficient specificity to allow the Parties to understand the basis of the Board's decision.

(e) **Records Retention.** The Board shall keep decisions on File in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

Tax 201.37 Motions for Rehearing or Clarification.

(a) **Filing.** Motions for rehearing, reconsideration or clarification or other such post-hearing motion, collectively "rehearing motion", shall be Filed within 30 days of the clerk's date on the Board's order or decision. Filing a rehearing motion shall be a prerequisite to appealing to the supreme court in accordance with RSA 541:3 and RSA 541:6.

(b) **Contents.** Rehearing motions shall state with specificity any points of law or fact the moving Party contends the Board overlooked, misapprehended, or requires clarification.

(c) **Objection.** The opposing Party shall not be required to File an objection to a rehearing motion. If an objection is Filed, however, it shall be Filed no later than 5 days after the rehearing motion is Filed and simultaneously copied to all other Parties pursuant to Tax 102.26 and Tax 201.14(a), respectively. The objection may include a request for additional time to respond to the rehearing motion. Pursuant to RSA 541:5, if the Board does not grant or deny the rehearing motion within 10 days, a suspension order shall be issued. Once an objection is received by the Board, no further filings shall be accepted unless relief is granted pursuant to Tax 201.41.

(d) **Grounds.** Rehearing motions shall only be granted for "good reason," pursuant to RSA 541:3, and a showing shall be required that the Board overlooked or misapprehended the facts or the law and such error affected the Board's decision. Rehearing motions shall not be granted for harmless error, meaning errors that, if corrected, would not challenge the Board's ultimate decision.

(e) **Rehearing/Failure to Attend.** A Party who, without Board Leave, fails to attend a hearing may File a rehearing motion and request a hearing. Such motion shall only be granted if the moving Party shows the failure to attend was due to Accident, Mistake or Misfortune.

(f) **Additional Facts or New Arguments.** Parties shall submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available to the moving Party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing. Except by Leave of the Board, parties shall not submit new evidence with rehearing motions. Leave shall only be granted when the offering Party has shown the evidence was newly discovered and could not have been discovered with due diligence in time for the hearing and when the new evidence will assist the Board.

(g) **Decision.** If a rehearing motion is granted, the Board shall either revise its decision or order without rehearing or it shall schedule a further hearing if such a hearing is required to correct the error.

Tax 201.38 Clerical Mistakes.

(a) **Correction.** Clerical mistakes in decisions, orders or other parts of the record, arising from oversight or omission, shall be corrected by the Board at any time on its own initiative or Party's motion.

(b) **Correction After Appeal.** During the pendency of an appeal, such mistakes shall be so corrected before the appeal is docketed in the supreme court, and thereafter while the appeal is pending shall only be corrected with Leave of the supreme court.

Tax 201.39 Costs.

(a) **Costs.** Except as otherwise provided by law, Costs shall be awarded as in the superior court. The Board shall order a Party to pay the other Party's Costs when the Board finds the matter was frivolously brought, maintained or defended in accordance with RSA 71-B:9, RSA 498-A:26-a and RSA 21-J:28-b, VI. All awards of Costs shall be limited to reasonable Costs.

(b) **Filing Fee.** Filing fees shall be refundable in accordance with RSA 76:17-b, and the Board shall refund filing fees if the Board determines a matter was frivolously brought, maintained or defended.

(c) **Itemization of Costs.** If the Board awards Costs, the Party awarded Costs shall:

(1) State in writing or on the record the Costs sought; and

(2) Submit documentation that shall prove the Party incurred the Costs being sought.

(d) **Expert Fees.** Costs for a Party's expert witness shall be limited to those reasonable fees incurred for the witness's testimony, but no Costs shall be awarded for the witness's research or preparation in accordance with Fortin v. Manchester Housing Authority, 133 N.H. 154, 157-60 (1990).

(e) **Sovereign Immunity.** Nothing in this section shall affect the sovereign immunity of the state in its political subdivision.

Tax 201.40 Withdrawal/Recusal of Board Member.

(a) **Member Withdrawal.** Upon Board member initiative or upon a Party's motion, a Board member shall, for good cause shown or to avoid the appearance of impropriety or lack of impartiality, withdraw from any adjudicative proceeding.

(b) **Cause for Recusal.** Pursuant to Taylor-Boren v. Isaac, __ N.H. __ (Dec. 30, 1998), recusal shall occur when an objective, disinterested observer fully informed of the facts would entertain significant doubt about the Board member's ability to be impartial or do justice in the case.

(c) **Motion.** If recusal is sought by a Party, the Party shall File a motion to the full Board and shall have the burden to show why recusal is warranted.

(d) **Good Cause Criteria.** For purposes of this section, "good cause" includes:

- (1) The member has a personal or pecuniary interest in the matter that is immediate, definite and subject to demonstration;
- (2) There is evidence that would cause a reasonable person to conclude the member's impartiality can be questioned; or
- (3) The matter involves the Municipality where the member resides or owns property.

(e) **Parties' Waiver of Recusal.** Except where personal bias or prejudice exists, a Board member may sit on a case where good cause for recusal exists, provided:

- (1) On the record, the Board member makes a full disclosure of the facts underlying the good cause;
- (2) That the other Board members conclude that the good cause is waivable, and the Board member can sit impartially;
- (3) The parties are given an opportunity outside the Board's presence to consider waiver; and
- (4) The parties, free of Board influence and on the record, waive recusal.

Tax 201.41 Relief from Failure to Comply with a Rule.

(a) **Waiver of Rules.** Waivers of these rules or request for relief for failure to comply with a rule or other Board order shall not be routinely granted.

(b) **Granting Relief.** The Board shall grant a Party relief for failure to comply with a rule or Board order when the failure was due to Accident, Mistake or Misfortune or when justice otherwise requires, provided that granting the request would not be contrary to any statute or supreme court case law.

(c) **Requests for Relief.** Requests for relief shall:

- (1) Be in writing promptly upon discovery of the failure;
- (2) State the failure, the specific reasons why relief should be granted, and the facts supporting the request;
- (3) State that the Party's failure has been corrected or state why the failure has not been corrected and, in such a case, when the failure will be corrected; and
- (4) Comply with all other rules applicable to filing Documents, including sending a copy to the other Party.

**PART Tax 202 GENERAL RULES GOVERNING PROPERTY-TAX APPEALS,
EXEMPTION APPEALS, CURRENT-USE APPEALS, LUCT APPEALS,
TIMBER TAX APPEALS, EXCAVATION TAX APPEALS, AND
APPEALS OF RESIDENCES LOCATED IN AN INDUSTRIAL OR
COMMERCIAL ZONE**

**Statutory Authority: RSA 71-B:16, I, II; RSA 72-B:13; RSA 75:10-19; RSA ch. 76;
RSA 79:8; RSA ch. 79-A; and RSA 81:5.**

Tax 202.01 Applicability.

This part, as well as Tax 101, shall apply to all Property-Tax Appeals, Exemption Appeals, Current-Use Appeals, LUCT Appeals, Timber Tax Appeals, Excavation Tax Appeals, and appeals of residences located in an industrial or commercial zone. The rules in Tax 201 shall also apply to these appeals. In addition, Tax 203 Property-Tax Appeals, Tax 204 Exemption Appeals, Tax 205 LUCT Appeals, Tax 206 Current-Use Appeals, Tax 213 timber tax appeals, Tax 214 Excavation Tax Appeals, and Tax 216 appeals of residences located in an industrial or commercial zone shall also apply.

Tax 202.02 Appeal to the Board.

(a) **Appeal.** To appeal to the Board, a Taxpayer shall, within the statutory period and in writing, File an Appeal Document with the Board after complying with all other prerequisites to appealing to the Board. Requirements for Appeal Documents are stated by type of appeal in Tax 203 Property-Tax Appeals, Tax 204 Exemption Appeals, Tax 205 LUCT Appeals, Tax 206 Current-Use Appeals, Tax 213 timber tax appeals, Tax 214 Excavation Tax Appeals, and Tax 216 appeals of residences located in an industrial or commercial zone.

(b) **Specificity Required.** The Taxpayer's Appeal Document shall state the grounds for the appeal with sufficient specificity to allow the Board and the Municipality to understand the Taxpayer's arguments and to allow the Municipality the opportunity to further review and address the Taxpayer's arguments. Conclusory statements without supporting arguments or data shall be insufficient.

(c) **Failure to Specify.** If an Appeal Document lacks sufficient specificity, the Board, on its own or by Municipality motion, shall declare the Taxpayer in Default. The Board shall then order the Taxpayer to amend the appeal within 10 days of the clerk's date on such order, providing sufficient specificity. If the Taxpayer fails to comply with such order, the Board shall dismiss the appeal.

(d) **Grounds Limited.** Throughout the appeal, the Taxpayer shall be limited to the grounds stated in the Appeal Document. The Board, on its own or by Municipality's motion, shall limit the Taxpayer's presentation to the issues raised in the appeal.

(e) **Timely Appeal.** The filing deadline with the Board shall be akin to a statute of limitations. The Board shall not have jurisdiction to accept an untimely Filed appeal even if the Taxpayer was prevented from timely filing because of Accident, Mistake or Misfortune, and even if the Municipality has not responded to the Taxpayer's Abatement Application in accordance with RSA 76:16-a, Appeal of Rokenetz, 122 N.H. 869 (1982), and Arlington Sample Book Company v. Board of Taxation, 116 N.H. 575, 576 (1976).

Tax 202.03 Inventory Requirements.

(a) **Applicability.** This section shall apply to appeals from Municipalities that require an RSA ch. 74 Inventory.

(b) **Filing Required.** Pursuant to RSA 74:7-a, the Board shall dismiss an appeal if the Taxpayer failed to File an RSA 74:4 Inventory. The Filing of or failure to File an Inventory shall run with the property. The failure of a Taxpayer's predecessor who owned the property when the Inventory should have been Filed shall bind the current owner even though the current owner did not own the property during the Filing period in accordance with Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

(c) **Extension.** In accordance with RSA 74:8, Taxpayers shall have an extension to June 1 for Filing the Inventory when the Taxpayer was prevented from Filing the Inventory due to Accident, Mistake or Misfortune. Any Taxpayer claiming an RSA 74:8 extension was or should have been granted shall state with specificity the Accident, Mistake or Misfortune that prevented the Taxpayer from timely Filing the Inventory. Neither the Board nor the Municipality shall extend the Filing deadline beyond June 1.

(d) **Monetary Penalty.** Actual assessment of the RSA 74:7-a, I, monetary penalty shall not be a prerequisite for a Taxpayer to lose the right to appeal. The loss of right to appeal and the assessment of the monetary penalty shall be independent penalties.

Tax 202.04 Failure to Timely File Inventory, Abatement Application or Appeal Document.

(a) **Jurisdictional Prerequisite.** Timely Filing of the RSA ch. 74 Inventory, if required by the Municipality, and the Abatement Application and the Appeal Document shall be prerequisites for the Board having jurisdiction over an appeal.

(b) **Untimely Filing.** Whenever an issue of timely Filing of an Inventory, Abatement Application or Appeal Document arises, the Board shall:

- (1) Notify the Taxpayer of the issue;
- (2) Provide the Taxpayer with 30 days to File any Documents or arguments to show the item was timely Filed with a certification that the Taxpayer sent the Municipality a copy of the Taxpayer's filing;
- (3) Inform the Taxpayer that failure to show the item was timely Filed shall result in a dismissal of the appeal;
- (4) If the Taxpayer Files any supporting Documents, allow the Municipality 10 days to submit any additional material for the Board's consideration; and
- (5) After the deadline for Filing Documents on the issue has passed, issue an order either dismissing the appeals, preserving the issue for review at a hearing, or accepting the item as timely Filed.

Tax 202.05 Discovery.

(a) **General Rule.** The discovery procedures shall be as stated in Tax 201.19.

Tax 202.06 Hearing Attendance.

(a) **Purpose.** This section is intended to ensure:

- (1) That Parties attend all hearings;
- (2) The efficient use of the Board's and the Parties' time; and
- (3) The Board and the Parties have an opportunity to obtain relevant information through presentations and inquiries at hearings.

(b) **Definition of Hearing.** In this section, "hearing" means the adjudicative proceeding scheduled to receive evidence and arguments upon which the decision on the merits will be based.

(c) **Attendance Required.** Unless a Party complies with (d) below, all Parties shall attend all hearings. Parties who are not present within 30 minutes after the scheduled hearing time shall be treated as not attending. If a Party who has not received Leave to not attend the hearing fails to appear, including failing to be present within 30 minutes of the scheduled hearing time, that Party shall be Defaulted.

(d) **Notice of Nonattendance.** Parties shall be excused from attending a hearing by Filing with the Board and copying the other Party a written request for Leave to not attend the hearing, that includes the following:

- (1) A statement that the Party is unavailable to attend the hearing; and
- (2) If not previously submitted to the Board, a hearing brief presenting the Party's arguments and supporting material; and
- (3) Such notice and brief shall be Filed with the Board not less than 14 days before the hearing date, which may be extended for good cause.

(e) **Excusal of Nonattendance.** If a Party complies with (d) above, the Board shall decide the appeal on the information before it.

(f) **Burden of Proof.** If granted Leave to not attend the hearing by the Board, nothing in this section shall alter the burden of proof or constrain the Board from reviewing and weighing the evidence.

(g) **Leave Granted.** Parties granted Leave to not attend a hearing shall be deemed to waive:

- (1) The opportunity to support their position other than as presented in writing;
- (2) The right to confront, question and challenge the other Party's evidence except as presented in the brief; and
- (3) The opportunity to answer Board questions.

(h) **Taxpayer's Nonattendance.** If a Taxpayer did not File a request for Leave to not attend a hearing and fails to attend a hearing or fails to appear for the hearing within 30 minutes of the scheduled hearing time, no hearing shall be held and the Taxpayer shall be finally Defaulted, and the appeal marked: "Taxpayer finally Defaulted; no further action" except the Municipality shall have 10 days from the clerk's date on the order to File a request for Costs under Tax 201.39.

(i) **Municipality's Nonattendance.** If a Municipality or any of its witnesses fails to attend a hearing without having complied with paragraph (d) or fails to appear for the hearing within 30 minutes of the scheduled hearing time, the Board shall start the hearing and decide the appeal based on the hearing and the

record. If a Municipality arrives before the conclusion of a hearing, the Board will provide them an opportunity to be heard.

Tax 202.07 Refund of Taxes.

(a) **Refund.** If taxes have been paid and an abatement ordered, the Municipality shall, within 2 Months of the clerk's date on the order, refund the abated taxes, by cash or check, plus interest at the rate set pursuant to RSA 76:17-a, from the date the taxes were paid to the date the refund is paid.

(b) **Credit on Future Taxes.** When an abatement is granted and taxes have been paid, the abatement shall either be refunded or credited to the Taxpayer pursuant to RSA 76:17-d.

Tax 202.08 Interest on Taxes Due or Owed.

(a) **General Rule.** Interest, under RSA 76:13 and/or RSA 80:32 and RSA 80:69, on overdue taxes shall be based on the ordered assessment. If the Board grants an abatement and taxes have not been paid, the RSA 76:13, the RSA 80:32, and the RSA 80:69 interest(s) shall only be due on the ordered assessment in accordance with Western Union Telegraph Co. v. State, 64 N.H. 265, 270 (1886).

(b) **Abatement Granted.** If the Board grants an abatement, and the Taxpayer has paid the tax and/or any interest, the abatement shall include the RSA 76:13 interest previously paid by the Taxpayer on both the excess taxes and interest from the date paid to the refund date.

(c) **Interest Paid.** If the Board grants an abatement and interest has been paid under RSA 76:13, RSA 80:32 or RSA 80:69, the interest on the overassessment shall also be abated.

Tax 202.09 Appeal.

(a) **Appeal to Supreme Court.** The appeal of the Board's decision shall be pursuant to RSA 541:6.

(b) **Rehearing Motion.** Filing a rehearing motion pursuant to RSA 541:3 shall be a prerequisite for appealing a Board decision in accordance with Tax 201.37.

PART Tax 203 SPECIFIC RULES GOVERNING PROPERTY-TAX APPEALS

Tax 203.01 Applicability.

This part, as well as Tax 101, Tax 201 and Tax 202, shall apply to Property Tax Appeals.

Tax 203.02 Abatement Application Filed with Municipality.

(a) **Appeals.** The Board shall hear appeals from municipal decisions on Abatement Applications in accordance with RSA 76:16-a and Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). Therefore, before appealing to the Board, the Taxpayer shall have Filed a timely Abatement Application with the Municipality.

(b) **Form.** The Taxpayer shall include the following on the RSA 76:16 Abatement Application prescribed by the Board:

- (1) The Taxpayer's name, address, daytime telephone number and the United States Internal Revenue Service Taxpayer identification number for all Taxpayers that are natural persons;

(2) The property or properties for which an abatement is sought, identified by street address and tax map and lot number; and

(3) A complete and specific statement of the grounds supporting the application with the Comparables relied upon by the Taxpayer.

(c) **Specificity Required.** The Abatement Application shall state the grounds for the abatement request with sufficient specificity to allow the Municipality to understand the Taxpayer's arguments and to allow the Municipality the opportunity to review and address the Taxpayer's arguments. Conclusory statements without supporting arguments or data shall be insufficient.

(d) **Signature.** The Taxpayer shall sign the Abatement Application. An attorney or Agent shall not sign the Abatement Application for the Taxpayer. An attorney or Agent may, however, sign the Abatement Application along with the Taxpayer to indicate the attorney's or Agent's representation.

(e) **Municipality Review.** The Municipality shall, within the statutory period, review all Abatement Applications and provide the Taxpayer with a written decision. A Municipality's failure to adequately review an Abatement Application shall be a factor the Board will review in deciding whether to award Costs.

(f) **No Timely Response.** The Municipality's failure to respond to the Taxpayer within the statutory time period shall not extend the deadlines for appealing to the Board in accordance with RSA 76:16-a, Appeal of Roketenetz, 122 N.H. 869 (1982), and Arlington American Sample Book Co. v. Board of Taxation, 116 N.H. 575, 576 (1976).

Tax 203.03 Appeal to the Board.

(a) **Appeal.** To appeal to the Board, a Taxpayer shall, within the statutory period and in writing, File an Appeal Document with the Board after the Municipality's decision or lack of decision in accordance with RSA 76:16-a.

(b) **Contents of Appeal Document.** All Appeal Documents shall be in the form prescribed by the Board and include the following:

(1) The Appellant's name, address and daytime telephone number;

(2) If the Appellant is not the owner, a statement of the Appellant's basis/standing for appealing in accordance with RSA 76:16-a;

(3) The property or properties being appealed, identified by street address and tax map and lot number;

(4) The assessment on the property or properties, and if available, the assessment broken down by land and building;

(5) A list of any other property owned by the Appellant and owner within the Municipality;

(6) A complete and specific statement of the grounds supporting the appeal, with the Comparables relied on by the Appellant, pursuant to (d) and (e) below; and

(7) The proper filing fee under Tax 501.

(c) **Properties Appealable.** Pursuant to RSA 76:16-a, the Board shall only hear an appeal regarding those properties for which an Abatement Application was Filed with the Municipality in accordance with Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). A Taxpayer may appeal more than one property in

one Appeal Document, provided all properties have common ownership, that is, complete unity of ownership such as where a husband and wife own 2 properties jointly but not where the husband and wife own one property jointly and another individually.

(d) **Specificity Required.** The Taxpayer's Appeal Document shall state the grounds for the appeal with sufficient specificity to allow the Board and the Municipality to understand the Taxpayer's arguments and to allow the Municipality the opportunity to further review and address the Taxpayer's arguments. Conclusory statements without supporting arguments or data shall be insufficient.

(e) **Required Material.** Specificity requires the Taxpayer to present material on the following, although all may not apply:

- (1) Physical data such as incorrect description or measurement of property;
- (2) Market data relative to the property's value on the April 1 assessment date, supported by Comparable sales or a professional opinion of value; and/or
- (3) Assessment data by a showing that the property's assessment, when compared to its market value, exceeds the general level of assessment in the Municipality.

(f) **Noncompliance.** If a Taxpayer Files an appeal without using the Board's Appeal Document form or if the Taxpayer Files an incorrectly completed form, including one that lacks sufficient specificity, the Board, on its own or by Municipality motion, shall declare the Taxpayer in Default. The Board shall then order the Taxpayer to File a completed Appeal Document or to amend the Appeal Document within 10 days of the clerk's date. If the Taxpayer fails to comply with such order, the Board shall dismiss the appeal.

(g) **Grounds Limited.** Throughout the appeal, the issues raised by the Taxpayer in the Abatement Application and Appeal Document may differ, but the grounds stated in the Appeal Document shall control the issues before the Board.

Tax 203.04 Filing Deadlines in Property-Tax Appeals.

(a) **Statutory Deadline.** The filing deadlines for Property-Tax Appeals shall be as stated in RSA 76:16 and RSA 76:16-a.

(b) **Filing Deadline.** An Abatement Application Filed with a Municipality or an Appeal Document Filed with the Board shall be untimely if it is Filed:

- (1) After the statutory deadlines; or
- (2) On or before the notice-of-tax date.

(c) **Timely Abatement Application.** The Board does not have the statutory authority to extend statutory timelines except as stated in (d) below, and the Board shall dismiss appeals when the Abatement Application was not timely Filed with the Municipality. In accordance with Appeal of Gillin, 132 N.H. 311, 313 (1989) and Daniel v. B & J Realty, 134 N.H. 174, 176 (1991), timely filing an Abatement Application shall be a jurisdictional prerequisite for the Board to hear the appeal.

(d) **Extension of Filing Deadline of Abatement Application.** If a Taxpayer's Abatement Application was untimely Filed, the Board shall treat the Abatement Application as timely Filed only if the Taxpayer demonstrates all of the following:

- (1) The Municipality supplied the Taxpayer with the incorrect Filing deadline;

- (2) The Taxpayer was unaware of the correct Filing deadline;
- (3) The Municipality should have known the Taxpayer would rely on the Municipality's information; and
- (4) The Taxpayer detrimentally relied on the Municipality's information such as missing the deadline for Filing the Abatement Application with the Municipality in accordance with City of Concord v. Tompkins, 124 N.H. 463, 467-68 (1984).

Tax 203.05 Pending Appeals, Effect of Ordered Assessment, and Appeals for Subsequent Years.

- (a) **Purpose.** This section details the effect the Board's abatement decisions have on other tax years.
- (b) **Applicability.** This section shall not relieve a Taxpayer from Filing the annual RSA ch. 74 Inventory if required by the Municipality. If a Taxpayer fails to timely File a completed Inventory for a subsequent tax year, the Taxpayer shall not be entitled to an abatement based on an ordered assessment for the subsequent tax year for which the Inventory was not Filed.
- (c) **Definitions.** The following definitions shall apply only to this section.
 - (1) **“Decision”** means either a written decision by the Board or a settlement agreement signed and Filed in accordance with Tax 201.23, but does not include a withdrawal, even if based on a settlement agreement, unless the agreement is Filed with the Board with the withdrawal;
 - (2) **“General reassessment”** means the process undertaken by a Municipality to reassess all property in the Municipality, and which:
 - a. Includes collecting physical data through reinspection and remeasurement;
 - b. Includes analyzing sales; and
 - c. Includes appraising all property at the same percentage of market value; but
 - d. Does not include annual or periodic adjustments to assessments;
 - (3) **“Good-faith reason or adjustment”** means a change made to an ordered assessment due to:
 - a. Omission or error on the assessment card;
 - b. Physical change to the property;
 - c. Adjustments to property strata after analysis of sales and assessment data;
 - d. Change in highest and best use; or
 - e. Other changes affecting value pursuant to RSA 75:8, II;
 - (4) **“Original appeal”** means the initial Property-Tax Appeal Filed with the Board by a Taxpayer or the Taxpayer's successor, seeking an abatement due to overassessment, where the appealed assessment has not been appealed before or where the appeal is based on reasons not stated in an earlier appeal;
 - (5) **“Original tax year”** means the tax year for which an original appeal was Filed;

(6) **“Subsequent appeal”** means any Property-Tax Appeal with the Board by the Taxpayer or the Taxpayer's successor that Filed an original appeal, seeking an abatement for overassessment on the same property and for the same reasons as in an original appeal but for a subsequent tax year; and

(7) **“Subsequent tax year(s)”** means the tax year(s) after the original tax year until there is a general reassessment and includes tax years while the appeal is pending and tax years after the decision is issued.

(d) **Subject Matter of Original Appeal.** For an original appeal, the Board shall only consider and issue a decision on the property and the assessment for the original tax year. The Board shall not consider or issue a decision on subsequent tax years unless a subsequent appeal was Filed and consolidated with the original appeal.

(e) **Subject Matter of Subsequent Appeal.** For a subsequent appeal, the Board shall:

(1) If a decision has not been issued on the original appeal, consider and issue a decision on the property and the assessments for the original tax year and the subsequent tax years from which the subsequent tax appeal was taken, but the Board shall not issue a decision on any other tax year; or

(2) If a decision has been issued on the original appeal, consider the property and the assessment for the subsequent tax year from which the subsequent appeal was taken; and/or

(3) If requested by the Taxpayer, also consider the assessments on the appealed properties for the intervening years, including reviewing if a good-faith reason existed for any change in the ordered assessment.

(f) **Ordered Assessment.** When the Board grants an abatement due to overassessment, the Municipality shall use the ordered assessment for subsequent tax years and the Board shall retain jurisdiction in accordance with RSA 76:17-c.

(g) **Adjustments to Ordered Assessment.** The Municipality may adjust the ordered assessment for the subsequent tax years if there is a good-faith reason for such adjustment in accordance with RSA 75:8 and RSA 76:17-c.

(h) **Abatements Based on Ordered Assessment.** When the Board issues a decision granting an abatement on the original appeal, the Municipality shall, within 2 Months of the clerk's date on the initial decision or the decision on any rehearing motion, issue an abatement based on the ordered assessment for the original appeal and abatements based on the ordered assessment with any good-faith adjustment for any subsequent tax year(s) for which the "notice of tax" has been given in accordance with RSA 76:16 and RSA 76:17-c.

(i) **Abatement Application for Subsequent Tax Year.** To receive the benefits of RSA 76:17-c and (f) and (h) above, the Taxpayer shall not be required to File an Abatement Application with the Municipality for subsequent years unless the Taxpayer intends to File a subsequent appeal.

(j) **Enforcement.** If the Municipality fails to comply with (f) or (h) above, the Taxpayer may File a motion to enforce compliance. A motion asserting noncompliance with paragraph (f) shall be Filed within the timelines set for appeals under RSA 76:16-a. A motion asserting noncompliance with paragraph (h) shall be Filed no earlier than 2 Months and a day after the clerk's date on the decision and no later than 3 Months after the clerk's date on the decision.

(k) **Motion Hearing.** At the hearing on the motion, the Board shall only hear evidence on whether the Municipality had a good-faith reason for not using the ordered assessment. The Board shall not receive any other evidence or arguments. The Municipality shall have the burden to make a showing that a good-faith reason existed for not using the ordered abatement. If such a showing is made, the burden shall shift to the Taxpayer to prove no good-faith reason existed.

(l) **Municipality Response.** Whenever the Board receives an enforcement motion, the Board shall order the Municipality to answer the motion within 30 days.

(m) **Filing Requirements for Subsequent Tax Years.** If a Taxpayer elects to File an appeal for a subsequent tax year, the Taxpayer shall comply with RSA 76:16 and RSA 76:16-a.

(n) **Subsequent Year Appeal --- When Required.** An appeal for a subsequent year shall be required when the original appeal or subsequent appeal will not protect the Taxpayer's rights, which includes, but is not limited to, the following:

- (1) The Taxpayer wants to raise issues or arguments not stated in the original appeal;
- (2) The Taxpayer wants to appeal other property not appealed in the original appeal; and
- (3) The assessment appealed in the original appeal has changed significantly due to a good-faith reason or adjustment.

Tax 203.06 Checklist to Municipalities.

(a) **Form.** Upon receipt of a timely Filed appeal, the Board shall send the Municipality a checklist, seeking the following information:

- (1) The date the Taxpayer Filed the Abatement Application;
- (2) Whether the Municipality requires an Inventory and if so, the date the Inventory was Filed;
- (3) A list of all properties in the Municipality owned by the Taxpayer, the assessments thereon with a breakdown between land and building, if used, denoting the properties for which an Abatement Application was Filed; and
- (4) Complete copies of the assessment-record cards for all properties listed in (3) for the year(s) under appeal.

(b) **Return.** The Municipality shall File the completed checklist within 30 days of the Board's date on the checklist, copying the Taxpayer with the completed checklist.

Tax 203.07 Notification to Taxpayer.

If the checklist described in Tax 203.06 shows the Taxpayer has complied with all timely filing requirements, the Board shall so notify the Taxpayer in writing that the appeal is accepted and being processed.

Tax 203.08 Grouping Appeals for Hearing.

(a) **Purpose.** This section is intended to enable the Board to efficiently and effectively hear appeals that involve common types of properties and common issues of fact or law. The Board shall consolidate appeals for hearing based on property type, value, location or such other similarities.

(b) **Prehearing Conference.** The clerk shall hold a prehearing conference with the Municipality to discuss the hearing procedure to be followed and to set deadlines for the Municipality to submit its proposed grouping. Only procedural matters shall be discussed at the conference. Specific appeals shall not be discussed.

(c) **Order.** Following the conference, the Board shall issue an order regarding the grouping of appeals. The order shall require the Municipality to submit the names of appeals that can be heard at the same hearing.

(d) **Burden of Proof.** Grouping appeals shall not affect the burden of proof, which shall remain on the Taxpayer.

Tax 203.09 Burden of Proof.

(a) **Property-Tax Appeals.** In Property-Tax Appeals, the Taxpayer shall have the burden of proving the assessment was disproportionate or illegal, resulting in the Taxpayer paying a disproportionate share of taxes in accordance with Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

(b) **Property-Tax Appeals – Property to be Considered.** In Property-Tax Appeals, the Board shall consider all of the property within a Municipality owned by a Taxpayer to determine if the aggregate assessment on all the properties is disproportionate to assessments generally prevailing in the Municipality in accordance with Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

Tax 203.10 Assessment-Record Cards and Assessment Manuals.

(a) **Property-Assessment Cards.** In Property-Tax Appeals, the assessment-record cards used by the Municipality shall be understandable by the Board and the Taxpayer. If codes or abbreviations are used on the cards, the Municipality shall, at or before the hearing, provide the Board and the Taxpayer with an explanation of the codes and abbreviations.

(b) **Assessment Manuals.** Upon the Board's request, a Municipality shall supply to the Board a copy of the assessment manual or Municipal Market Data Survey to assist the Board in understanding the methodology used by the Municipality and to enable the Board to use the manual if the Board concludes an assessment needs to be adjusted using the manual.

PART Tax 204 SPECIFIC RULES GOVERNING EXEMPTION APPEALS

Tax 204.01 Applicability.

This part, as well as Tax 101, Tax 201 and Tax 202, shall apply to all Exemption Appeals.

Tax 204.02 Prerequisites.

(a) **Application to Municipality.** Filing a timely application for exemption or credit shall be a jurisdictional prerequisite for the Board to hear an Exemption Appeal.

(b) **Qualification.** To qualify for an exemption or credit, the Taxpayer shall, as of April 1 for the appealed tax year, own the property and be in compliance with all statutory requirements in accordance with RSA ch. 72, RSA 74:1 and RSA 74:2.

Tax 204.03 Appeal to the Board.

(a) **Appeal.** To appeal to the Board, a Taxpayer shall, within the statutory period and in writing, File an Appeal Document with the Board.

(b) **Form.** The Taxpayer may either File the Board's form Appeal Document for Property-Tax Appeals, with appropriate revisions to include the information required by (c) below, or File a written Appeal Document that includes all the information stated in (c) below.

(c) **Contents of Appeal Document.** The Appeal Document shall include the following:

- (1) The Appellant's name, address and daytime telephone number;
- (2) The property or properties for which the assessment is being appealed, identified by street address and tax map and lot number;
- (3) The assessment on the property or properties, broken down by land and building if provided by Municipality;
- (4) A complete and specific statement of the grounds supporting the appeal;
- (5) A copy of the exemption application Filed with the Municipality and a statement of the Municipality's action on the application; and
- (6) The proper filing fee under Tax 501.

Tax 204.04 Checklist to Municipalities.

(a) **Form.** Upon receipt of a timely Filed appeal, the Board shall send the Municipality a checklist, seeking the following:

- (1) The date the Taxpayer Filed the application for exemption or credit and the reasons for the Municipality's denial of the application;
- (2) Complete copies of the assessment-record cards for all properties under appeal.

(b) **Return.** The Municipality shall File the completed checklist within 30 days of the Board's date on the checklist, copying the Taxpayer with the completed checklist.

Tax 204.05 Notice to Taxpayer.

Notice and Questionnaire. If the checklist described by Tax 204.04 shows the Taxpayer has complied with all timely filing requirements, the Board shall inform the Taxpayer of this, and the appeal shall be scheduled for hearing.

Tax 204.06 Burden of Proof.

The Taxpayer shall have the burden to prove it was entitled to the statutory exemption or credit for the year under appeal.

PART Tax 205 SPECIFIC RULES GOVERNING LAND-USE-CHANGE TAX APPEALS

Tax 205.01 Applicability.

This part, as well as Tax 101, Tax 201 and Tax 202, shall apply to LUCT Appeals.

Tax 205.02 Abatement Application Filed with Municipality.

(a) **Appeals.** The Board shall hear appeals from municipal decisions on Abatement Applications in accordance with RSA 79-A:10, RSA 76:16-a, and Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). Therefore, before appealing to the Board, the Taxpayer shall have Filed a timely Abatement Application with the Municipality. For LUCT Appeals, the notice-of-tax date shall be the date the Municipality sends the Taxpayer the land-use-change-tax bill.

(b) **Form.** The Taxpayer shall include the following on the RSA 76:16 Abatement Application prescribed by the Board:

- (1) The Appellant's name, address, daytime telephone number and the United States Internal Revenue Service Taxpayer identification number for all Taxpayers that are natural persons;
- (2) The property or properties for which an abatement is sought, identified by street address and tax map and lot number; and
- (3) A complete and specific statement of the grounds supporting the application with the Comparables relied upon by the Taxpayer.

(c) **Specificity Required.** The Abatement Application shall state the grounds for the abatement request with sufficient specificity to allow the Municipality to understand the Taxpayer's arguments and to allow the Municipality the opportunity to review and address the Taxpayer's arguments. Conclusory statements without supporting arguments or data shall be insufficient.

(d) **Signature.** The Taxpayer shall sign the Abatement Application. An attorney or Agent shall not sign the Abatement Application for the Taxpayer. An attorney or Agent may, however, sign the Abatement Application along with the Taxpayer to indicate the attorney's or Agent's representation.

(e) **Municipality Review.** The Municipality shall, within the statutory period, review all Abatement Applications and provide the Taxpayer with a written decision. A Municipality's failure to adequately review an Abatement Application shall be a factor the Board will review in deciding whether to award Costs.

(f) **No Timely Response.** The Municipality's failure to respond to the Taxpayer within the statutory time period shall not extend the deadlines for appealing to the Board in accordance with RSA 76:16-a, Appeal of Roketenetz, 122 N.H. 869 (1982), and Arlington American Sample Book Co. v. Board of Taxation, 116 N.H. 575, 576 (1976).

Tax 205.03 Appeal to the Board.

(a) **Appeal.** To appeal to the Board, a Taxpayer shall, within the statutory period and in writing, File an Appeal Document with the Board after the Municipality's decision or lack of decision in accordance with RSA 76:16-a.

(b) **Appeal Document.** Taxpayers may either modify the Appeal Document prepared by the Board for Property-Tax Appeals or File an Appeal Document with all the information required by this paragraph.

(c) **Contents of Appeal Document.** The Taxpayer shall File the Appeal Document prescribed by the Board, which shall include the following:

- (1) The appellant's name, address and daytime telephone number;
- (2) The property or properties for which the assessment is being appealed, identified by street address and tax map and lot number;
- (3) The amount of the land-use-change tax, the date of the billing and the change-in-use date;
- (4) A complete and specific statement of the grounds supporting the appeal, with the Comparables relied on by Taxpayer;
- (5) The proper filing fee under Tax 501.

(d) **Concurrent Specificity not Required.** The issues raised by the Taxpayer in the Abatement Application and the Appeal Document may differ, but the grounds stated in the Appeal Document shall control the issues before the Board.

Tax 205.04 Filing Deadlines in LUCT Appeals.

(a) **Statutory Deadlines.** The filing deadlines for LUCT Appeals shall be as stated in RSA 79-A:10.

(b) **Filing Deadlines.** Tax 203.04, Filing Deadlines in Property-Tax Appeals, shall apply to LUCT Appeals with the notice-of-tax date defined in Tax 101.30.

Tax 205.05 Checklist to Municipalities.

(a) **Form.** Upon receipt of a timely Filed appeal, the Board shall send the Municipality a checklist, seeking the following:

- (1) The date the Taxpayer Filed the Abatement Application;
- (2) Complete copies of the assessment-record cards for all appealed properties for the year under appeal;
- (3) Copy of all current-use applications and maps; and
- (4) Copy of the land-use-change tax bill and lien release.

(b) **Return.** The Municipality shall File the completed checklist within 30 days of the Board's date on the checklist, copying the Taxpayer with the completed checklist.

Tax 205.06 Notice to Taxpayer.

Notice. If the checklist described in Tax 205.05 shows the Taxpayer has complied with all timely filing requirements, the Board shall inform the Taxpayer of this and schedule the appeal for hearing.

Tax 205.07 Burden of Proof.

In LUCT Appeals, the Taxpayer shall have the burden to prove the Municipality erred in assessing the tax or in assessing the tax amount. Such challenges may include challenges to the change-in-use date used by the Municipality and/or the property's full value as determined by the Municipality.

PART Tax 206 SPECIFIC RULES GOVERNING CURRENT-USE APPEALS

Tax 206.01 Applicability.

This part, as well as Tax 101, Tax 201 and Tax 202, shall apply to Current-Use Appeals.

Tax 206.02 Appeal to the Board.

(a) **Appeal.** To appeal to the Board, a Taxpayer shall, within the statutory period and in writing, File an Appeal Document with the Board in accordance with RSA 79-A:9.

(b) **Form.** The Taxpayer may either File the Board's form Appeal Document for Property-Tax Appeals, with appropriate revisions and with all the information required by (c) below, or they may draft and File their own written Appeal Document that includes all the information stated in (c) below.

(c) **Contents of Appeal Document.** The Taxpayer shall include the following on the Appeal Document prescribed by the Board:

- (1) The Appellant's name, address and daytime telephone number;
- (2) The property or properties for which the assessment is being appealed, identified by street address and tax map and lot number;
- (3) A complete and specific statement of the grounds supporting the appeal;
- (4) A copy of the current-use application Filed with the Municipality and a statement of the Municipality's action on the application; and
- (5) The proper filing fee under Tax 501.

Tax 206.03 Filing Deadlines in Current-Use Appeals.

The filing deadlines for Current-Use Appeals shall be as stated in RSA 79-A:9.

Tax 206.04 Checklist to Municipalities.

(a) **Form.** Upon receipt of a timely Filed appeal, the Board shall send the Municipality a checklist, seeking the following:

- (1) A complete copy of the current-use application with any maps or surveys Filed with the application;
- (2) The date the Taxpayer Filed the current-use application and the Municipality's decision thereon;
- (3) Whether the Municipality requires an Inventory and if so, the date the Inventory was Filed; and
- (4) Complete copies of the assessment-record cards for all appealed properties under appeal.

(b) **Return.** The Municipality shall File the completed checklist within 30 days of the Board's date on the checklist, copying the Taxpayer with the completed checklist.

Tax 206.05 Notice to Taxpayer.

Notice and Questionnaire. If the Tax 206.04 checklist shows the Taxpayer has complied with all timely filing requirements, the Board shall inform the Taxpayer of this and schedule the appeal for hearing.

Tax 206.06 Burden of Proof.

In Current-Use Appeals, the Taxpayer shall have the burden to prove the Municipality erred in denying, in whole or part, the Taxpayer's application for current use, including the denial of the category applied for.

PART Tax 207 SPECIFIC RULES GOVERNING THE REGULATION OF TAX CONSULTANTS

Tax 207.01 Scope.

Applicability. This part, as well as Tax 101 and Tax 201, shall apply to the rules governing the regulation of tax consultants. Pursuant to RSA 71-B:7-a, the Board shall ensure that tax consultants act appropriately and adequately in representing Taxpayers before the Board and before Municipalities. Tax 207 shall govern the conduct of tax consultants and the actions to be taken upon Board review or when a complaint alleges a tax consultant has failed to act appropriately and adequately in representing Taxpayers.

Tax 207.02 Definitions.

(a) The following definitions apply to this part:

- (1) **“Board Review”** means the action initiated by a written summary of the Board's concern of a tax consultant's actions based on the Board's observations of a tax consultant's conduct and no complaint has been Filed. The written summary shall include the specific reasons the Board has concerning a tax consultant's noncompliance with RSA 71-B:7-a or Tax 207.03;
- (2) **“Commonly represent”** means, within a calendar year, representation of 4 or more Taxpayers in RSA 76:16 or RSA 76:16-a appeals;
- (3) **“Complainant”** means an individual or entity except the Board who Files a complaint;
- (4) **“Complaint”** means a written statement from any identified source, except the Board, that alleges a tax consultant has not complied with RSA 71-B:7-a or Tax 207.03; and
- (5) **“Tax consultant”** means a nonattorney who, with or without compensation, commonly represents Taxpayers in RSA 76:16 and RSA 76:16-a appeals before municipalities and the Board.

Tax 207.03 Standards of Conduct.

(a) **Criteria.** Tax consultants shall:

- (1) Possess a working knowledge of the statutes, rules and caselaw relating to property taxation and abatement;
- (2) Possess a working knowledge of valuation principles and methods or employ individuals with such knowledge;

- (3) Act honestly in carrying out the role of tax consultant, including dealings with the represented Taxpayers and all state and local officials;
- (4) Comply with all statutes, rules, caselaw and Board orders when representing Taxpayers;
- (5) File only abatement requests to municipalities or appeals to the Board that have a supportable and good-faith basis that the Taxpayer is entitled to an abatement; and
- (6) Take sufficient steps to adequately represent Taxpayers such as performing a value analysis based on market data and being prepared for Filing all Documents and appearing at all hearings.

Tax 207.04 Complaints.

(a) **Complaint Contents.** A complainant shall include the following information in the complaint:

- (1) The complainant's name, address and phone number;
- (2) The complainant's source of knowledge about the tax consultant;
- (3) Whether the complainant is Filing as an individual or on behalf of an entity; and
- (4) The specific reasons why a tax consultant has not complied with RSA 71-B:7-a or Tax 207.03.

(b) **Order of Costs.** If the Board concludes during the preliminary review or after the disciplinary hearing that a complaint was Filed without a good-faith basis, the complainant shall be subject to an order of Costs under RSA 71-B:9 and Tax 201.39.

Tax 207.05 Basis for Complaints, Board Review and Sanctions.

(a) **Basis of Complaint.** Complaints, Board review and Board sanctions shall be based on the following:

- (1) Failure to comply with Tax 207.03 standards of conduct;
- (2) Commission of an act or omission involving dishonesty, fraud or misrepresentation that is substantially related to the qualifications and duties of a tax consultant; and/or
- (3) Conviction, including the conviction based on a plea of guilty or nolo contendere, of a crime that is substantially related to the qualifications and duties of a tax consultant or has been convicted of a felony that has not been annulled.

Tax 207.06 Sanctions.

(a) **Itemization of Sanctions.** If the Board finds a tax consultant failed to comply with RSA 71-B:7-a and/or Tax 207.03, the Board shall consistently impose one or more of the following sanctions, which are listed in order of severity:

- (1) Require the tax consultant to participate in remedial action, such as completing a course in a selected area of valuation, taxation, ethics or administrative procedures;
- (2) Written censure to be posted at the Board;
- (3) Suspension for a specified time period not to exceed one year; and
- (4) Revocation of the right to act as a tax consultant before Municipalities or the Board.

(b) **Taxpayer Rights.** At the time the Board suspends or revokes a tax consultant's right to represent Taxpayers, the Board shall determine what appropriate steps are necessary to ensure the represented Taxpayers are not adversely affected by the suspension or revocation.

Tax 207.07 Service and Answer.

(a) **Service of Complaint.** Upon receipt of a complaint or a Board review, the Board shall serve a copy of the Tax 207.04 complaint or Tax 207.01(a) written summary of the Board's concerns, along with orders of notice, on the tax consultant by certified mail, return receipt requested.

(b) **Response.** The tax consultant shall have 20 days from the clerk's date on the orders of notice to File a written response to the complaint or written summary of the Board's concerns. If within the 20 days the tax consultant Files a request for additional time, the Board shall provide the tax consultant with an additional 30 days to File a response.

Tax 207.08 Board Investigation of Complaint.

(a) **Investigations.** The Board shall conduct any complaint investigation it deems appropriate.

(b) **Board Excluded.** Complaint investigations shall be conducted by the Board staff but not by Board members.

(c) **Notice of Consultant.** Upon commencement of a complaint investigation, the Board shall inform the tax consultant about the nature and purpose of the complaint investigation.

(d) **Written Report.** All complaint investigative materials shall be placed in a written report Filed with the Board and copied to the tax consultant.

(e) **Filing Report.** If the complaint investigative report will be considered as part of the preliminary review under Tax 207.09, the complaint investigative report shall be Filed within 60 days of the complaint Filing. The tax consultant shall then have 20 days to File a response to the report.

(f) **Report Copy to Consultant.** Unless previously supplied, if the complaint investigative report will be used at a disciplinary hearing, it shall be provided to the tax consultant no less than 20 days before the hearing.

Tax 207.09 Preliminary Review.

(a) **Review.** Upon receipt of the tax consultant's response, the lapse of the 20 days if no response is Filed by the tax consultant and the conclusion of any complaint investigation, the Board shall conduct a preliminary review of either the complaint, the response and any investigative material or of the Board review and the reasons.

(b) **Frivolous Complaint.** If the preliminary review concludes that the complaint or the Board review is unsubstantiated, frivolous, or does not warrant a disciplinary hearing, the Board shall so notify the tax consultant and the complainant, and no further action shall be taken.

(c) **Reasonable Cause for Complaint.** If the preliminary review determines reasonable cause exists to conclude that the tax consultant failed to comply with RSA 71-B:7-a or Tax 207.03, the Board shall, within 120 days of Filing of the complaint, hold an adjudicative hearing.

Tax 207.10 Quorum.

The Board quorum for preliminary review and adjudicative hearings shall be 3 members.

Tax 207.11 Adjudicative Hearing.

(a) **Notice.** Hearing notice for the adjudicative hearing shall be sent to the complainant and the tax consultant and shall be posted in 2 public places.

(b) **Order of Hearing.** The adjudicative hearing shall be conducted in the following order:

- (1) Opening statement by the Board with a summary of the complaint or Board review, the response, and any investigative material;
- (2) A statement by the complainant and any other witness who wishes to testify in support of the complaint;
- (3) A presentation by the tax consultant and any witnesses called by the tax consultant;
- (4) Questions by Board;
- (5) An opportunity for closing comments by the complainant; and
- (6) Closing by tax consultant.

(c) **Testimony.** All testimony shall be subject to Board questions or cross-examination by the tax consultant.

(d) **Cross Examination.** Complainants may testify in accordance with Tax 207.11(b), but they shall have no other role in the preliminary review or the adjudicative hearing. Specifically, the complainant shall not have the right to conduct cross-examination, make objections, make arguments or File motions and memorandum.

Tax 207.12 Decision and Standard of Proof.

(a) **Decision.** After the adjudicative hearing, the Board shall issue a written decision.

(b) **Order of Sanction.** If the Board finds, by a preponderance of the evidence, that the tax consultant's actions do not comply with RSA 71-B:7-a and Tax 207.05, an order of violation and sanction pursuant to Tax 207.06 shall be issued.

Tax 207.13 Settlement.

Nothing in this part shall prohibit the Board or the tax consultant from seeking and obtaining an informal settlement of a disciplinary proceeding. A settlement agreement signed by the tax consultant and the Board shall have the same effect as a final, nonappealable order.

Tax 207.14 Reinstatement.

(a) **Timeline.** When the Board revokes a tax consultant's right to act as a tax consultant, the tax consultant may, no earlier than one year after the Board order, seek reinstatement.

(b) **Specificity Required.** A request for reinstatement shall state with specificity why the revocation should be lifted.

(c) **Investigation.** Upon receipt of a reinstatement request, the Board shall conduct any investigation it deems appropriate.

(d) **Board Review.** Within 30 days of receipt of a reinstatement request, the Board shall review the request and either grant the request without a hearing or schedule a hearing on the request, with the hearing being scheduled no later than 60 days after Filing of the request.

(e) **Notice.** Hearing notice for the reinstatement hearing shall be sent to the tax consultant and shall be posted in 2 public places.

(f) **Burden of Proof.** At a reinstatement hearing, the tax consultant shall have the burden of proof to show, by a preponderance of the evidence, that the reason underlying the revocation no longer exists and that the tax consultant is able to properly represent Taxpayers.

(g) **Hearing Order.** The reinstatement hearing shall be conducted in the following order:

- (1) Opening statement by the Board;
- (2) Presentation by the tax consultant as to why reinstatement should occur;
- (3) Opportunity for any public comments;
- (4) Questions by the Board; and
- (5) Closing statement by the tax consultant.

Tax 207.15 Appeal.

(a) **Appeal Tribunal.** Pursuant to RSA 71-B:12 and RSA Chapter 541, the appeal by a tax consultant from any Board order under this part shall be to the New Hampshire Supreme Court.

(b) **Limitation.** The complainant shall have no right to File a rehearing motion or an appeal.

(c) **Staying Sanctions.** Pursuant to RSA 541-A:30, I, if the Board's final action is unfavorable to a tax consultant, the ordered sanction shall not commence until the appeal timelines have passed. If an appeal is taken, the Board order shall be stayed during the appeal.

PART Tax 208 RULES GOVERNING PETITIONS FOR MUNICIPAL-WIDE REASSESSMENT

Statutory Authority: RSA 71-B:16

Tax 208.01 Applicability.

This part, as well as Tax 101 and Tax 201, shall apply to RSA 71-B:16 orders for reassessment and RSA 79-A:12 orders for reclassification.

Tax 208.02 Written Complaint Against Specific Property.

(a) **Complaint.** A written complaint Filed under RSA 71-B:16, I or RSA 79-A:12, I shall include:

- (1) The complainant's name, address and daytime telephone number;
- (2) The name and address of the property owner against whose property the complaint is Filed;

- (3) The description of the property, including the street address and tax map and lot numbers, that is the subject matter of the complaint;
- (4) A statement specifically describing the basis for the complaint;
- (5) The complainant's signature; and
- (6) The proper filing fee under Tax 501.

(b) **Costs.** Pursuant to RSA 71-B:9, the Board shall order the complainant to pay the property owner's Costs if the Board finds the complaint was frivolously Filed or maintained.

Tax 208.03 Steps for Specific Complaints.

(a) **Steps.** If the Board receives a complaint made pursuant to RSA 71-B:16, I or RSA 79-A:12, I, the Board shall:

- (1) Notify the property owner against whom the complaint was Filed;
- (2) Notify the Municipality in which the property is located;
- (3) Allow the property owner and the Municipality an opportunity to respond in writing to the complaint; and
- (4) Review the complaint and the property owner's and Municipality's responses and schedule a hearing.

(b) **Show Cause Hearing.** If the Board finds, based on the complaint and the Taxpayer's and Municipality's response, the complaint lacks a good-faith basis, the Board shall issue a show-cause order, requiring the complainant to show cause why the complaint should not be dismissed or denied without a hearing.

Tax 208.04 Petition for Municipal-Wide Reassessment.

(a) **Petition.** A petition Filed under RSA 71-B:16, IV shall:

- (1) Be captioned on each page: "To the Board of Tax and Land Appeals -- Petition for Municipal-Wide Reassessment, Pursuant to RSA 71-B:16, IV";
- (2) State on the first page the name of the Municipality for which the petition is Filed;
- (3) State on the first page the names of not more than 2 lead petitioners;
- (4) Conspicuously state on the first page and each signature page, "Pursuant to RSA 71-B:16, IV, the undersigned property Taxpayers of (insert Municipality's name) petition for a municipal-wide reassessment. We assert that a basis exists for this petition under the criteria of RSA 71-B:16-a for a municipal-wide revaluation. By signing below we also agree to be jointly and severally liable should the Board order the petitioners to pay any Costs involved with this review should it be determined that the petition was frivolously Filed or prosecuted."
- (5) Include the original signatures, the date signed and the printed name and address for each property taxpayer signing the petition; and
- (6) Be Filed with the appropriate filing fee under Tax 501.

Tax 208.05 Steps for Municipal-Wide Reassessment.

(a) **Procedure.** Whenever a petition is Filed pursuant to RSA 71-B:16, IV or RSA 21-J:3, XXV or whenever the Board initiates a proceeding pursuant to RSA 71-B:16, III, the Board shall:

- (1) Notify the Municipality of the proceeding pursuant to RSA 71-B:16, III or IV;
- (2) For petitions pursuant to RSA 71-B:16, IV, order the Municipality to verify the petitioners are taxpayers in the Municipality;
- (3) Perform a comparative study of recent sales and assessments and determine various indications of central tendency and coefficient of dispersion or variation of the sales prices to the assessments;
- (4) Based on the results of the assessment-to-sale study and other information before the Board and using the criteria specified by RSA 71-B:16-a, decide whether good cause appears to exist to order a municipal-wide reassessment;
- (5) Hold a hearing on whether the Municipality should be ordered to perform a municipal-wide reassessment at which hearing petitioners, taxpayers and the Municipality shall be heard.
 - a. The hearing shall be noticed not less than 10 days prior to the hearing date;
 - b. The Municipality shall comply with this notice requirement by posting copies of the show cause order in 2 public places in the Municipality or printing the show cause order in a newspaper of general circulation; and
- (6) Issue an order in conformance with RSA 71-B:16-a.

Tax 208.06 Order for Reassessment.

(a) **Procedure.** If the Board orders a municipal-wide reassessment, the Board shall:

- (1) Order the Municipality to periodically File progress reports with the Board of the steps taken to comply with the reassessment order, copying the lead petitioners, and such reports shall be signed by the statutory assessing officials of the Municipality;
- (2) Once the reassessment has been completed and there have been sufficient sales not relied upon in setting the assessments, the Board shall perform a comparative study of recent sales and assessments and determine various indications of central tendency and coefficient of dispersion or variation of the sales prices to the assessments to determine whether a statistically acceptable reassessment was performed;
- (3) If the Board concludes the Municipality has complied with the reassessment order and has completed a statistically acceptable reassessment, the Board shall issue a final order to such effect; and
- (4) If the Board concludes the Municipality has not complied with the reassessment order or has not completed a statistically acceptable reassessment, the Board shall hold a hearing to determine what further orders to issue or what further steps to take.

Tax 208.07 Petition for Municipal-Wide Current-Use Reclassification.

(a) **Petition.** A petition Filed under RSA 79-A:12, IV shall:

- (1) Be captioned on each page: "To the Board of Tax and Land Appeals -- Petition for Municipal-Wide Reclassification of Current-Use Assessments, Pursuant to RSA 79-A:12, IV";
- (2) State on the first page the name of the Municipality for which the petition is Filed;
- (3) State on the first page the names of not more than 2 lead petitioners;
- (4) Conspicuously state on the first page and each signature page, "Pursuant to RSA 79-A:12, IV, the undersigned property taxpayers of (insert Municipality's name) petition for a municipal-wide reclassification of current-use assessments. We assert that a basis exists for this petition under the criteria of RSA 79-A:12, IV for a municipal-wide reclassification of current-use assessments. By signing below we also agree to be jointly and severally liable should the Board order the petitioners to pay any Costs involved with this review should it be determined that the petition was frivolously Filed or prosecuted;"
- (5) Include the original signatures, the date signed and the printed name and address for each property taxpayer signing the petition; and
- (6) Be Filed with the appropriate filing fee under Tax 501.

Tax 208.08 Steps for Municipal-Wide Current-Use Reclassification.

(a) **Procedure.** Whenever a petition is Filed pursuant to RSA 79-A:12, IV or whenever the Board initiates a proceeding pursuant to RSA 79-A:12, III, the Board shall:

- (1) Notify the Municipality of the proceeding pursuant to RSA 79-A:12, III or IV;
- (2) For petitions pursuant to RSA 79-A:12, IV, order the Municipality to verify the petitioners are taxpayers in the Municipality;
- (3) Hold a hearing on whether the Municipality should be ordered to perform a municipal-wide reclassification at which hearing petitioners, taxpayers and the Municipality shall be heard; and
- (4) Issue an order in conformance with RSA 79-A:12 and RSA 79-A:13.

Tax 208.09 Service.

(a) **Service on Municipalities.** Service of notice of the petition for reassessment or reclassification on a town shall be made by mailing the notice certified mail to the town clerk and one selectman in accordance with RSA 71-B:16, RSA 510:10 and RSA 510:12.

(b) **Service on Cities.** Service of notice of the petition for reassessment or reclassification on a Municipality that is a city shall be made by mailing the notice to the mayor or one alderman and the city clerk in accordance with RSA 71-B:16, RSA 510:10 and RSA 510:12.

(c) **Service on Property Owner.** Service of the notice of the petition for reassessment or reclassification on a property owner shall be made by mailing the notice certified mail to the property owner against whose land a complaint is made under RSA 71-B:16, I or RSA 79-A:12, I.

Tax 208.10 Lead Petitioners.

In proceedings conducted pursuant to RSA 71-B:16, IV and RSA 79-A:12, IV, not more than 2 petitioners shall be designated by the petitioners, or in the absence by the Board, as the lead petitioners. Notices and orders shall only be provided to the lead petitioners who shall be solely responsible for complying with all deadlines and Board orders and for providing copies of all notices and orders to the other petitioners. If the lead petitioners fail to comply with deadlines or Board orders, the Board shall continue the case and shall order the petitioners to name new lead petitioners.

PART Tax 209 RULES GOVERNING APPEALS OF STATE TAXES, PENALTIES AND PROPERTY TAX RELIEF REFUNDS

Tax 209.01 Applicability.

This part, as well as Tax 101 and Tax 201, shall apply to all appeals of the DRA decisions under RSA 21-J:9-a, V; RSA 21-J:28-b, IV; RSA 83-F:8; and RSA 198:54.

Tax 209.02 Appeal to the Board.

(a) **Appeal.** After complying with all statutory prerequisites, an Appellant shall, within the statutory period and in writing, File a written appeal with the Board.

(b) **Form.** The Appeal Document shall include the following:

- (1) The Appellant's name, address and daytime telephone number;
- (2) The grounds for the appeal; and
- (3) The proper filing fee under Part Tax 501.

(c) **Specificity Required.** The Appellant's Appeal Document shall state the grounds for the appeal with sufficient specificity to allow the Board and the DRA to understand the Appellant's arguments. Conclusory statements without supporting arguments or data shall be insufficient.

(d) **Noncompliance.** If an Appellant Files an appeal without using the Board's Appeal Document form or if the Appellant Files an incorrectly completed form, including one that lacks sufficient specificity, the Board, on its own or by DRA motion, shall declare the Appellant in Default. The Board shall then order the Appellant to File a completed Appeal Document or to amend the Appeal Document within 10 days of the clerk's date. If the Appellant fails to comply with such order, the Board shall dismiss the appeal.

Tax 209.03 Procedures for Processing Appeal.

(a) **DRA File.** As used in this section, the term "DRA File" means the record on which the DRA's final decision was based, including a copy of the DRA's final decision.

(b) **Procedure.** Upon receipt of an appeal, the Board shall:

- (1) Determine if the appeal was timely Filed; and
- (2) Send a copy of the appeal to the DRA.

(c) **Copy to Board.** If the appeal was timely Filed, the DRA shall, within 20 days of the Board's request, submit to the Board a copy of the DRA File. The DRA shall send a letter to the Appellant, stating the DRA File has been sent to the Board. The Appellant may then view the DRA File at the Board's offices.

Tax 209.04 Burden of Proof.

The Appellant shall have the burden to prove the DRA erred in its decision.

PART Tax 210 RULES GOVERNING EMINENT-DOMAIN PROCEEDINGS

Statutory Authority: RSA ch. 498-A

Tax 210.01 Applicability.

This part, as well as Tax 101 and Tax 201, shall apply to all eminent domain proceedings and shall be followed to provide a fair and efficient procedure for handling such cases. RSA ch. 498-A states many of the procedures to be followed, and the parties shall follow RSA ch. 498-A. Tax 201.24 and Tax 201.37 do not apply to this part.

Tax 210.02 Declaration of Taking.

(a) **Title Search.** To determine who should be named as a Condemnee, the Condemnor shall perform a title search at the appropriate registry of deeds and shall contact the tax collector in the municipality where the property is situated. The Condemnor shall update the initial title search simultaneously with the Declaration Filed with the Board and also simultaneously with the Declaration recorded at the registry of deeds.

(b) **Attorney Review.** The title work shall be reviewed by the Condemnor's attorney before the Declaration is Filed with the Board to ensure the proper Parties are named and their interests properly identified.

(c) **Title Issue.** If the Condemnor's attorney discovers any possible title issues that concern present ownership or present rights of those named as Condemnee(s), the Condemnor shall notify the Board of such issue when the Declaration is Filed.

(d) **Declaration – Contents.** The Declaration shall include the following:

- (1) All of the information required by RSA 498-A:5;
- (2) The name and address of each Condemnee with reference to the registry book and page of the document under which each Condemnee's interest arises;
- (3) A specific description of the property interest, as the Condemnor can determine from the title records, held by each Condemnee, such as, fee, life estate, lessee, mortgagee, and municipal-tax lienholder; and
- (4) The United States Internal Revenue Service taxpayer identification number for all Condemnees that are natural persons.

(e) **Corporation or Partnership as Condemnee.** If a corporation is named as a Condemnee, the Condemnor shall specify the individual and his/her title upon whom the Declaration shall be served in accordance with RSA 510:13 and RSA 510:14.

Tax 210.03 Amended or Corrective Declaration of Taking.

(a) **Statutory Basis.** The Declaration shall only be amended or corrected in accordance with RSA 498-A:5, III.

(b) **Motion to Amend.** The Condemnor or Condemnee shall move to amend or correct a Declaration, stating the proposed amendment and the reason therefor. If the Condemnor Files the motion, the proposed amended Declaration shall be Filed with the motion.

(c) **Amended Declaration – Contents.** Amended or corrective Declarations shall:

- (1) State what has been amended or corrected;
- (2) State the book and page the original Declaration was recorded in at the registry; and
- (3) After Board approval, be recorded at the appropriate registry by the Condemnor and the Condemnor shall File with the Board a letter stating when the amended Declaration was recorded, copying the letter to the Condemnee.

Tax 210.04 Preliminary Objections.

(a) **Statutory Objection.** Preliminary objections shall be Filed in accordance with RSA 498-A:9-a and RSA 498-A:9-b.

(b) **Stay of Proceedings.** The Board shall stay any just compensation proceedings while an RSA 498-A:9-b preliminary objection is pending.

Tax 210.05 Damages Deposit.

(a) **Deposit by Condemnor.** When paying to the Board the damage deposit required by RSA 498-A:11, the Condemnor shall File a damage deposit that shall:

- (1) Comply with all applicable Tax 201 rules;
- (2) State the deposit amount;
- (3) Certify the deposit is the Condemnor's good-faith estimate of the just compensation due Condemnee(s) as estimated by a qualified, impartial appraiser in accordance with RSA 498-A:4 and RSA 498-A:11; and
- (4) List the name and interest of each Condemnee along with the recording information from which the interest arises.

(b) **Inclusion of Deposit.** The damage deposit may be included in the Declaration.

(c) **Account for Deposit.** The Board shall place all deposits in a savings account of a local bank, naming as account holders the Board and all Condemnees. All interest earned on the deposit shall accrue to the Condemnees in accordance with 1986 Op. Atty. Gen. 8.

(d) **Withdrawal of Deposit Signed by all Condemnees.** If the Board receives a written request to withdraw the deposit signed by all Condemnees, the Board shall release the deposit payable to all Condemnees or payable to certain Condemnees if all Condemnees consent to such payment.

(e) **Withdrawal of Deposit Not Signed by all Condemnees.** If the Board receives a written request to withdraw the deposit signed by some but not all Condemnees, the Board shall:

- (1) Notify all Condemnees of the request;
- (2) Provide all Condemnees 10 days to object to the request; and
- (3) Release the deposit payable to all Condemnees if no objection is Filed; or
- (4) Rule on the request if an objection is Filed.

(f) **Effect of Withdrawal.** By withdrawing the deposit, the Condemnee shall be deemed to have waived all claims except for a claim to greater compensation in accordance with RSA 498-A:11, III.

Tax 210.06 Apportionment of Damages.

The Board shall not hear any evidence or arguments on apportionment of damages, pursuant to RSA 498-A:25, unless a motion for hearing on apportionment of damages is Filed, stating the facts and issues underlying the request.

Tax 210.07 Comparables.

Except by Board Leave, parties shall be limited to no more than 10 Comparables per residential property and 20 Comparables per nonresidential property. Parties may move for Leave, at least 4 weeks before the hearing, to use more Comparables, and the Board shall grant the motion if the moving Party has shown the additional Comparables are necessary to the Party's case and will not be unduly repetitious or burdensome on the Board or the other Party.

Tax 210.08 Hearings.

(a) **Location.** Unless the parties agree to a hearing elsewhere, just compensation hearings shall be held in the county where the property is located in accordance with RSA 498-A:16. Once the view has been taken, the Board may hold hearings at its Concord hearing room in accordance with RSA 498-A:16.

(b) **Views.** Absent specific Board order, the Board shall view all condemned properties after opening the scheduled hearings and before taking evidence other than view evidence. Parties shall be prepared at the hearing for the view. Parties shall have plans prepared and marked for the view, and parties shall have boundary lines marked on the property or someone at the view to indicate the boundary lines. The Party shall ensure the Board can obtain access to all land and buildings on the condemned property.

Tax 210.09 Failure to Appear at the Hearing.

(a) **Preliminary-Objection Hearing.** If the Condemnee fails to attend a preliminary-objection hearing, the Board shall deny the preliminary objection.

(b) **Just-Compensation Hearing.** If either Party fails to attend the just-compensation hearing, the Board shall nonetheless take the view and hear the attending Party's evidence and review all Documents in the Board's File.

(c) **Owner/Condemnee Settlement without Other Condemnees.** If any Condemnee reaches a settlement with the Condemnor but without the agreement of all other Condemnees the Board shall:

- (1) Require the Condemnor and the settling Condemnee(s) to File the settlement agreement with the Board stating in the agreement the amount of just compensation;

- (2) Require the Condemnor to contact all other Condemnees to obtain their consent to the agreement; and
- (3) Send written notice to the Condemnees who have not signed the settlement agreement about the proposed settlement, including a copy of the agreement and informing them that they shall object within 10 days of the clerk's date or the case will be marked as settled.

Tax 210.10 Hearing Transcripts.

(a) **Record.** The Board shall cause an accurate record of the hearing to be made in accordance with RSA 541-A:31, VII and RSA 498-A:20.

(b) **Stenographic Record.** If the Board hires a court reporter to make the record but not a transcript, the Parties may obtain a transcript at their cost by contacting the court reporter directly, and if requested by the Board, a copy shall be supplied to the Board.

Tax 210.11 Interest on Excess Award.

If the Board's just-compensation award exceeds the damage deposit, the Condemnor shall pay the Condemnee interest on the excess award at the statutory rate calculated from the Declaration Filing date to the payment date in accordance with RSA 524:1-b and RSA 336:1.

Tax 210.12 Burden of Proof.

In Eminent Domain Proceedings, the Condemnor has the burden of proving, by a preponderance of the evidence, that the amount offered will justly compensate the Condemnee in accordance with Fortin v. Manchester Housing Authority, 133 N.H. 154, 157 (1990) and State v. Garceau, 118 N.H. 321, 323 (1978).

Tax 210.13 Award of Costs and Appeal.

(a) **Award to Prevailing Party.** If neither the Condemnor nor the Condemnee appeals from the award of the Board as provided in RSA 498-A:27, the Board shall award Costs to the prevailing Party in accordance with RSA 498-A:26-a.

(b) **Timelines.** A motion for Costs shall be Filed no earlier than 20 days but no later than 40 days from the date of the Board's report in accordance with RSA 498-A:26.

(c) **Itemization.** A motion for Costs shall itemize Costs in accordance with Tax 201.39(c) and shall state whether an RSA 498-A:27 appeal has been taken on the Board's damages.

(d) **Appeal.** If an appeal is Filed in superior court pursuant to RSA 498-A:27, the appealing Party shall File a copy of the appeal with the Board to enable the Board to determine if Costs can be awarded pursuant to RSA 498-A:26-a.

PART Tax 211 RULES GOVERNING APPEALS OF EQUALIZED VALUATION

Tax 211.01 Applicability.

This part, as well as Tax 101 and Tax 201, shall apply to all appeals of the DRA determinations of equalized valuation under RSA 71-B:5, II. Tax 201.19 and Tax 201.37 shall not apply in this part.

Tax 211.02 RSA 71-B:5, II Appeals to the Board.

(a) **General Rule.** A municipality shall, within the statutory period and in writing, File an appeal of its equalized valuation with the Board.

(b) **Contents.** The municipality shall include the following in its Appeal Document:

- (1) The municipality's name, contact person, address and daytime telephone number;
- (2) The reasons for disagreeing with the DRA's equalized valuation; and
- (3) The proper filing fee under Tax 501.01.

(c) **Specificity.** The municipality's Appeal Document shall state the reasons for disagreeing with the equalized valuation with sufficient specificity to allow the Board and DRA to understand the municipality's arguments. Conclusory statements without supporting arguments or data shall be insufficient.

Tax 211.03 Procedures for Processing Appeal.

(a) **Board Review.** Upon receipt of the municipality's appeal, the Board shall:

- (1) Determine if the appeal was timely Filed; and
- (2) Send a copy of the appeal to the DRA.

(b) **Telephone Conference.** If the appeal was timely Filed, the Board shall hold a telephone conference with the municipality and DRA to determine:

- (1) Discovery timelines and a hearing date;
- (2) What Documents used by DRA in calculating the equalized valuation need to be provided to the municipality either prior to or at the hearing;
- (3) Further clarification of the municipality's reasons for appeal if the application lacks adequate specificity; and
- (4) If stipulations to any agreed facts are feasible.

Tax 211.04 Burden of Proof.

The municipality shall have the burden to prove the DRA erred in calculating the equalized valuation.

PART Tax 212 RULES GOVERNING PETITIONS FOR RULE CHANGES

Tax 212.01 Petitions for Rule Changes.

(a) **Applicability.** This section shall apply to any person intending to submit a petition to the Board to adopt, amend or repeal the Board's rules.

(b) **Procedure.** A petition to adopt, amend or repeal a rule shall be submitted to the Board's clerk. The clerk shall schedule a Board meeting in compliance with RSA ch. 91-A and present the petition to the Board.

(c) **Board Review.** The Board shall:

- (1) Notice the petitioner of the meeting at which the petition will be reviewed;
- (2) Consider the petition;
- (3) Request further information, if necessary;
- (4) Decide on the petition; and
- (5) Within 30 days after submission of the petition, notify the petitioner of the Board's decision.

(d) **Granting a Petition.** If the Board grants the petition, the Board shall commence rulemaking proceedings pursuant to RSA 541-A:4.

(e) **Form of Petition.** A petition to adopt, amend or repeal a rule shall:

- (1) Be limited to a single subject; and
- (2) If the petition concerns a rule, cite the rule in question.

Tax 212.02 Public Comment Hearing.

(a) **Public Hearing.** If the Board initiates rulemaking proceedings under RSA 541-A, or if rulemaking is initiated pursuant to a petition for rulemaking, the Board shall hold at least one public comment hearing pursuant to RSA 541-A:11.

(b) **Notice.** Notice shall be given at least 20 days prior to the public comment hearing pursuant to RSA 541-A:6, I.

PART Tax 213 RULES GOVERNING APPEALS OF TIMBER TAX

Tax 213.01 Applicability.

This part, as well as Tax 101, Tax 201 and Tax 202, shall apply to all Timber Tax Appeals under RSA 79:8.

Tax 213.02 Abatement Applications Filed with Municipality.

Authority. The Board shall hear appeals from municipal decisions on timely Filed Timber Tax Abatement Applications in accordance with RSA 79:8.

Tax 213.03 Appeals to the Board.

(a) **Appeal.** To appeal to the Board, an owner shall, within the statutory period outlined in RSA 79:8, File an Appeal Document with the Board after the Municipality's decision or lack of a decision.

(b) **Contents of Appeal Document.** Each Appeal Document shall include the following:

- (1) The appellant's name, address and daytime telephone number;
- (2) If the appellant is not the owner, a statement of the appellant's basis/standing for appealing;

- (3) The location of the property subject to the Timber Tax, identified by street address, tax map and lot number, and operation number;
- (4) A copy of the Timber Tax bill;
- (5) A copy of a map showing harvesting locations and distance;
- (6) A copy of the original and supplemental notice of intent to cut and the report of wood or timber cut; and
- (7) A complete and specific statement of the grounds supporting the appeal.

(c) **No Filing Fee Required.** Pursuant to RSA 79:8, there shall be no filing fee when filing an appeal with the Board.

(d) **Noncompliance.** If an appellant Files an appeal that lacks sufficient specificity, the Board, on its own or by Municipality motion, shall declare the appellant in Default. The Board shall then order the appellant to cure the Default within 10 days of the clerk's date. If the appellant fails to comply with such order, the Board shall dismiss the appeal.

(e) **Grounds Limited.** Throughout the appeal, the issues raised by the appellant in the Timber Tax Abatement Application and the Appeal Document may differ, but the grounds stated in the Appeal Document shall control the issues before the Board.

Tax 213.04 Filing Deadlines in Timber Tax Appeals.

(a) **Statutory Deadline.** The filing deadlines for Timber Tax Appeals shall be as stated in RSA 79:8.

(b) **Filing Deadline.** A Timber Tax Abatement Application Filed with a Municipality or an appeal Filed with the Board shall be untimely if it is Filed:

- (1) After the statutory deadlines; or
- (2) On or before the Notice of Tax Date.

(c) **Timely Abatement Application.** The Board does not have the statutory authority to extend statutory timelines except as stated in (d) below, and the Board shall dismiss the appeal when the Timber Tax Abatement Application was not timely Filed with the Municipality. In accordance with Appeal of Gillin, 132 N.H. 311, 313 (1989) and Daniel v. B & J Realty, 134 N.H. 174, 176 (1991), timely filing an Abatement Application shall be a jurisdictional prerequisite for the Board to hear the appeal.

(d) **Extension of Filing Deadline of Abatement Application.** If an appellant's Timber Tax Abatement Application was untimely Filed, the Board shall treat the Timber Tax abatement as timely Filed only if the appellant demonstrates all of the following:

- (1) The Municipality supplied the appellant with the incorrect filing deadline;
- (2) The appellant was unaware of the correct filing deadline;
- (3) The Municipality should have known the appellant would rely on the Municipality's information; and
- (4) The appellant detrimentally relied on the Municipality's information such as missing the deadline for filing the Timber Tax Abatement Application with the Municipality in accordance with City of Concord v. Tompkins, 124 N.H. 463, 467-68 (1984).

Tax 213.05 Checklist to Municipalities.

(a) **Form.** Upon receipt of a timely Filed appeal, the Board shall send the Municipality a checklist, seeking the following information:

- (1) The date the appellant Filed the Timber Tax Abatement Application; and
- (2) Whether the appellant properly Filed the original and supplemental notice of intent to cut and the report of all wood and timber cut in accordance with RSA 79:10 and RSA 79:11.

(b) **Return.** The Municipality shall File the completed checklist within 30 days of the checklist date, copying the completed checklist to the appellant.

Tax 213.06 Notification to Appellant.

Notice. If the checklist described in Tax 213.05 shows the appellant has complied with all timely filing requirements, the Board shall so notify the appellant in writing that the appeal has been accepted and will be processed.

Tax 213.07 Hearings.

(a) **Location.** Timber Tax hearings shall be held at the Board's offices at 107 Pleasant Street, Johnson Hall, Third Floor, Concord, NH.

(b) **Prehearing Conferences.** The Board shall hold prehearing conferences for purposes of preparing for final hearing and exploring settlement pursuant to RSA 541-A:31, V(c) and Tax 201.20.

Tax 213.08 Burden of Proof.

Burden of Proof. In Timber Tax Appeals, the appellant shall have the burden of proving what the proper stumpage value and resulting tax should have been in accordance with RSA 79:1, III.

PART Tax 214 RULES GOVERNING APPEALS OF EXCAVATION TAX

Tax 214.01 Applicability.

This part, as well as Tax 101, Tax 201 and Tax 202, shall apply to all appeals of Excavation Taxes under RSA 72-B:13.

Tax 214.02 Abatement Applications Filed with Municipality.

Authority. The Board shall hear appeals from municipal decisions on Abatement Applications in accordance with RSA 72-B:13. Therefore, before appealing to the Board, the Taxpayer shall have timely Filed an Abatement Application with the Municipality.

Tax 214.03 Appeals to the Board.

(a) **Appeal.** To appeal to the Board, an owner shall, within the statutory period outlined in RSA 72-B:13, File an Appeal Document with the Board after the Municipality's decision or lack of a decision.

(b) **Contents of Appeal Document.** Each Appeal Document shall include the following:

- (1) The appellant's name, address and daytime telephone number;
- (2) If the appellant is not the owner, a statement of the appellant's basis/standing for appealing;
- (3) The location of the property subject to the Excavation Tax, identified by street address and tax map and lot number;
- (4) A copy of the Excavation Tax bill;
- (5) A copy of the report and original and supplemental notice of intent to excavate;
- (6) A complete and specific statement of the grounds supporting the appeal; and
- (7) The proper filing fee under Tax 501.

(c) **Noncompliance.** If an appellant Files an Appeal Document that lacks sufficient specificity, the Board, on its own or by Municipality motion, shall declare the appellant in Default. The Board shall then order the appellant to cure the Default within 10 days of the clerk's date. If the appellant fails to comply with such order, the Board shall dismiss the appeal.

(d) **Grounds Limited.** Throughout the appeal, the issues raised by the appellant in the Abatement Application and Appeal Document may differ, but the grounds stated in the Appeal Document shall control the issues before the Board.

Tax 214.04 Filing Deadlines in Excavation Tax Appeals.

(a) **Statutory Deadline.** The filing deadlines for Excavation Tax Appeals shall be as stated in RSA 72-B:13.

(b) **Filing Deadline.** An Abatement Application Filed with a Municipality or an Appeal Document Filed with the Board shall be untimely Filed if it is Filed:

- (1) After the statutory deadlines; or
- (2) On or before the Notice of Tax Date.

(c) **Timely Abatement Application.** The Board does not have the statutory authority to extend statutory timelines except as stated in (d) below, and the Board shall dismiss the appeal when the Abatement Application was not timely Filed with the Municipality. In accordance with Appeal of Gillin, 132 N.H. 311, 313 (1989) and Daniel v. B & J Realty, 134 N.H. 174, 176 (1991), timely filing an Abatement Application shall be a jurisdictional prerequisite for the Board to hear the appeal.

(d) **Extension of Filing Deadline of Abatement Application.** If an appellant's Abatement Application was untimely Filed, the Board shall treat the Abatement Application as timely Filed only if the appellant demonstrates all of the following:

- (1) The Municipality supplied the appellant with the incorrect filing deadline;
- (2) The appellant was unaware of the correct filing deadline;

(3) The Municipality should have known the appellant would rely on the Municipality's information; and

(4) The appellant detrimentally relied on the Municipality's information such as missing the deadline for filing the Abatement Application with the Municipality in accordance with City of Concord v. Tompkins, 124 N.H. 463, 467-68 (1984).

Tax 214.05 Checklist to Municipalities.

(a) **Form.** Upon receipt of a timely Filed appeal, the Board shall send the Municipality a checklist, seeking the following information:

(1) The date the appellant Filed the Abatement Application; and

(2) Whether the appellant properly Filed the original and supplemental notice of intent to excavate and the report of excavated material in accordance with RSA 72-B:8 and RSA 72-B:9.

(b) **Return.** The Municipality shall File the completed checklist within 30 days of the checklist date, copying the completed checklist to the appellant.

Tax 214.06 Notification to Appellant.

Notice. If the checklist described in Tax 214.05 indicates the appellant has complied with all timely filing requirements, the Board shall so notify the appellant in writing that the appeal has been accepted and will be processed.

Tax 214.07 Burden of Proof.

Burden of Proof. In Excavation Tax Appeals, the appellant shall have the burden of proving the volume of earth upon which the assessment was made was not properly determined in accordance with RSA 72-B:1.

PART Tax 215 RULES GOVERNING PETITIONS TO THE BOARD UNDER RSA 21-J:11-a, II (b)

Tax 215.01 Applicability.

This part, as well as Tax 101, Tax 201 and Tax 202, shall apply to all petitions Filed by the commissioner of the DRA under RSA 21-J:11-a, II (b) and heard by the Board under RSA 71-B:5, V. Tax 201.37 and Tax 202.09 shall not apply to this part.

Tax 215.02 Petitions to the Board.

(a) **Contents of Petition.** To petition the Board, the commissioner shall File a written Document, which includes the following:

(1) The name of the Municipality;

(2) A specific statement as to why the commissioner refuses to certify the Municipality's assessments;

(3) A copy of the corrective actions ordered by the commissioner pursuant to RSA 21-J:11-a, II; and

(4) A specific statement outlining how the Municipality did not adequately respond to the commissioner's order under paragraph (3) above.

(b) **Notice to Municipality.** The commissioner's petition shall be concurrently copied to the Municipality when Filed with the Board.

Tax 215.03 Procedures for Processing Petitions.

Procedure. The Board shall acknowledge receipt of the petition and order the commissioner to File a copy the DRA's File within 3 days of the Board's request. The commissioner shall concurrently send a duplicate copy of the File to the Municipality. The commissioner shall send a letter to the Municipality stating the File has been sent to the Board. The Municipality may then view the File at the Board's offices.

Tax 215.04 Hearings.

(a) **Notice.** Upon receipt of the commissioner's File, the Board shall schedule a hearing as soon as possible, giving at least 20 days notice of the hearing as provided in RSA 71-B:10. The petition shall be given priority status in accordance with RSA 71-B:5, V.

(b) **Board Review.** Before issuing a final decision on the petition, the Board shall consider any rules or standards adopted pursuant to RSA 21-J:11-a or RSA 21-J:14-b, I and shall utilize the criteria in RSA 71-B:16-a.

Tax 215.05 Appeals.

Appeals. Pursuant to RSA 71-B:5, V, the Board's final decision shall be appealable directly to the supreme court, and the appealing Party shall File the appeal within 20 days of the clerk's date on the final decision, copying the Board concurrently when filing the appeal with the supreme court.

PART TAX 216 APPEAL OF A RESIDENCE LOCATED IN AN INDUSTRIAL OR COMMERCIAL ZONE UNDER RSA 75:14

Tax 216.01 Applicability. This part, as well as Tax 101 and Tax 201, shall apply to appeals of residences located in an industrial or commercial zone under RSA 75:14.

Tax 216.02 Appeals to the Board.

(a) **Appeals.** The Board shall hear appeals from municipal decisions denying, in whole or in part, an application made pursuant to RSA 75:11 to appraise a residence at its current use as a residence in an industrial or commercial zone.

(b) **Form.** A Taxpayer shall, within the statutory period outlined in RSA 75:14, File an Appeal Document with the Board after the Municipality's decision or lack of a decision.

(c) **Contents of Appeal Document.** Each Appeal Document shall include the following:

(1) The appellant's name, address and daytime telephone number;

- (2) If the appellant is not the owner, a statement of the appellant's basis/standing for appealing;
- (3) The property or properties being appealed, identified by street address and tax map and lot number;
- (4) The assessment on the property or properties, and if available, the assessment broken down by land and building;
- (5) A complete and specific statement of the grounds supporting the appeal, with the Comparables relied on by the appellant; and
- (6) The proper filing fee under Tax 501.

(d) **Noncompliance.** If an appellant Files an appeal that lacks sufficient specificity, the Board, on its own or by Municipality motion, shall declare the appellant in Default. The Board shall then order the appellant to cure the Default within 10 days of the clerk's date. If the appellant fails to comply with such order, the Board shall dismiss the appeal.

Tax 216.03 Filing Deadlines.

Filing Deadlines. The filing deadlines for an appeal of an assessment of a residence located in an industrial or commercial zone shall be as stated in RSA 75:11 and RSA 75:14.

Tax 216.04 Checklist to Municipalities.

(a) **Form.** Upon receipt of a timely Filed appeal, the Board shall send the Municipality a checklist, seeking the following information:

- (1) Whether a timely annual application for classifying a residence under RSA 75:11 was made with the Municipality; and
- (2) Copies of the assessment-record card(s) for all properties for which an RSA 75:11 application was made.

(b) **Return.** The Municipality shall File the completed checklist within 30 days of the checklist date, copying the completed checklist to the appellant.

Tax 216.05 Notification to Appellant.

Notice. If the checklist described above shows the appellant has complied with all timely filing requirements, the Board shall notify the appellant in writing that the appeal has been accepted and will be processed.

Tax 216.06 Burden of Proof.

Burden of Proof. The appellant shall have the burden of proving the assessment was disproportionate or illegal, resulting in the appellant paying a disproportionate share of taxes in accordance with Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

CHAPTER Tax 300 NOTICE-OF-TAX DATE

PART Tax 301 RULES GOVERNING THE ESTABLISHMENT OF THE NOTICE-OF-TAX DATE

Statutory Authority: RSA 76:16, RSA 76:16-a and RSA 76:17; see also RSA 76:13

Tax 301.01 Applicability.

Tax 301 shall apply to the procedures to be followed and established by the Board and municipalities in establishing the notice-of-tax date.

Tax 301.02 Definition.

"Date of the Final Tax Bill" means, for the purposes of Tax 301:

- (a) In municipalities that bill annually, the date the municipality mails the tax bills to the Taxpayers;
- (b) In municipalities that bill semiannually, pursuant to RSA 76:15-a, the date the municipality mails the second tax bill to the Taxpayers; and
- (c) In municipalities operating with an optional fiscal year, pursuant to RSA 31:94-a or a special legislative act, the date the municipality mails the first tax bill to the Taxpayers, provided that first tax bill establishes the total tax liability for the tax year and the bill includes notice that abatements must be sought from the first bill.

Tax 301.03 Procedure.

The following procedure shall be followed in establishing the notice-of-tax date:

- (a) The Board shall provide the DRA with the form described in Tax 301.04 below;
- (b) The DRA shall deliver the form to each municipality on or near the date the DRA sets the municipality's tax rate;
- (c) The municipality shall complete the form and deliver it to the Board within 3 days of the municipality's mailing of the final tax bill; and
- (d) Upon receipt of the form, the Board shall establish the notice-of-tax date in accordance with Tax 301.05.

Tax 301.04 Form.

The form delivered by the Board to the municipalities shall include the following:

- (a) A space for the municipality's name;
- (b) A statement concerning the municipality's obligation under RSA 76:13 to complete the form;
- (c) A space for the municipality to indicate the date the final tax bill was mailed; and
- (d) A line for the tax collector's name and signature.

Tax 301.05 Establishing the Notice-of-Tax Date.

(a) **Board Review.** Upon receipt of the completed form, the Board shall review it to ensure that it has been completed and signed.

(b) **Establishment of Date.** The Board shall then establish the notice-of-tax date as the day the final tax bill was mailed even if that date is a Saturday, Sunday or holiday in accordance with RSA 21:35. The Board shall compile and keep a list of all notice-of-tax dates.

(c) **Amended Tax Bill.** If a municipality sends out amended tax bills to all taxpayers, a new notice-of-tax date shall be set. If a municipality sends a taxpayer an amended tax bill that increases the taxpayer's taxes, the notice-of-tax date for that taxpayer shall be the date established as the day the amended tax bill was sent to the taxpayer.

CHAPTER Tax 400 RULES GOVERNING EXEMPTION APPLICATIONS TO MUNICIPALITIES (RSA 72:23-c; RSA 72:23, VI)

PART Tax 401 EXEMPT AND CHARITABLE ORGANIZATIONS

Tax 401.01 Form Content.

(a) **Applicability.** This section is intended to describe the information required on the annual list of property of exempt organizations pursuant to RSA 72:23-c, and the annual financial statement for charitable organizations pursuant to RSA 72:23, VI. These forms are for the use of Municipalities to obtain information from organizations seeking exemptions under RSA 72:23, III, RSA 72:23, IV, RSA 72:23, V and RSA 72:23, V-a, and RSA 72:23-a through RSA 72:23-k, except RSA 72:23-c.

(b) **Annual List of Property.** Organizations requesting an exemption shall File a List of Real Estate and Personal Property on Which Exemption is Claimed on the form prescribed by the Board pursuant to RSA 72:23-c, I and which includes the following information:

- (1) The applicant's certification that the information given is correct;
- (2) The name, address, telephone number and signature of the applicant, and the date signed;
- (3) The name of the Municipality in which the exemption is claimed;
- (4) The statutory section under which the exemption is claimed;
- (5) Whether or not the applicant is organized or incorporated in New Hampshire, and if not, where its principal place of business is located;
- (6) Whether or not the applicant has been granted an exemption from taxation by special act of the legislature since May 7, 1913, and if it has, the date of that action;
- (7) The general purpose for which the applicant is organized or incorporated;
- (8) If the applicant is a religious organization:
 - a. Whether it is a regularly recognized and constituted denomination, creed or sect; and
 - b. Its generally recognized name;

(9) If the applicant is a charitable organization:

- a. The services it provides;
- b. The beneficiaries of the services;
- c. Whether there is a charge for the services;
- d. An explanation of the charge; and
- e. The purpose for which the income is used;

(10) A statement of whether the Municipality in which the applicant claims exemption voted prior to April 1, 1958, to grant exemption on property not specifically exempted by RSA 72, as amended by Chapter 202 of the Laws of 1957, and the total amount of such exemption voted; and

(11) A list of the real estate and personal property on which exemption is claimed, stating the tax map and lot number, a description of the property, and its use.

(c) **Annual Financial Statement.** Organizations requesting an exemption shall File a Charitable Organization Financial Statement on the form prescribed by the Board pursuant to RSA 72:23, VI and which includes the following information:

- (1) The fiscal year of the organization;
- (2) The name of the organization or society, and the names and addresses of the principal officers;
- (3) The name of the Municipality(ies) in which the exemption is claimed;
- (4) Its Internal Revenue Service identification number;
- (5) The date of registration or incorporation with the New Hampshire secretary of state;
- (6) A financial statement or best evidence available of the organization's source of income and expenditures in the preceding fiscal year;
- (7) Internal Revenue Service Form 990, or other similar non-profit information return, if prepared; and
- (8) The signature on the form of the treasurer or principal officer of the organization or society.

CHAPTER Tax 500 FILING FEES

PART Tax 501 FEES REQUIRED

Statutory Authority: RSA 71-B:9; RSA 72:34; RSA 76:16-a; RSA 79-A; and RSA 498-A:16

Tax 501.01 Fees.

(a) Fees shall be as follows:

- (1) Property Tax Appeals pursuant to RSA 76:16-a \$ 65.00

(2) Property Tax Appeals in Unincorporated Towns and Unorganized Places pursuant to RSA 81:5	\$ 65.00
(3) Appeals against property not owned by Appellant pursuant to RSA 71-B:16, I	\$ 65.00
(4) Land-Use-Change Tax Appeals pursuant to RSA 79-A:10	\$ 65.00
(5) Current-Use Appeals pursuant to RSA 79-A:9	\$ 65.00
(6) Municipal-wide reassessment and corrective actions pursuant to RSA 71-B:16, IV, RSA 71-B:9 and RSA 21-J:11-a, II(b)	\$ 65.00
(7) DRA Appeals pursuant to RSA 21-J:28(b); RSA 71-B:9 and RSA 71-B:5, II	\$ 65.00
(8) Exemptions Appeals pursuant to RSA 72:34-a and RSA 71-B:9	\$ 65.00
(9) Filing fee for each Eminent-Domain Proceeding against one owner's property pursuant to RSA 498-A:16-a	\$ 100.00
(10) Current-Use Appeal against land not owned by Appellant pursuant to RSA 79-A:12	\$ 10.00
(11) Authenticated copies of tapes (per tape)	\$ 15.00
(12) Copies of material (per page) pursuant to RSA 91-A:4, IV	\$.10
(13) All other appeals or petitions pursuant to RSA 71-B:9	\$ 65.00
(14) Excavation Tax Appeals pursuant to RSA 72-B:13	\$ 65.00
(15) Appeals of an assessment of a residence located in an industrial or commercial zone under RSA 75:14	\$ 40.00

(b) **Copy Fees.** If a Party fails to supply the Board with the required number of copies or fails to copy the other Party and the Board copies the other Party, the Board may bill the Party for copying.

Tax 501.02 Waiver of Fees.

When a Party is financially unable to pay any fee, that Party may File a request for waiver of the fee. Such request shall be accompanied with a financial affidavit, listing the Party's income and expenses. The Board shall grant the waiver when it concludes the Party cannot pay the fee due to financial hardship.